

JUVENILE CONFERENCING AND RESTORATIVE JUSTICE IN TASMANIA

BY

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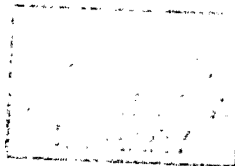
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disrupt the goals of restorative justice, including reductions in recidivism. Special consideration is given to the place of parents in reintegrative shaming theory.

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INTRODUCTION

This thesis concerns recent innovations in the way that criminal justice systems deal with young offenders, namely through a process that is sometimes generically referred to as ‘juvenile conferencing’. Juvenile conferences have been instituted across Australia and in numerous other countries. Empirical research was conducted in Tasmania, a small island State of Australia with a population of less than half a million people. Australia is a federation of six States (Tasmania, Victoria, New South Wales, Queensland, South Australia, and Western Australia) and two territories (the Australian Capital Territory and the Northern Territory). On European settlement of Tasmania (then Van Diemen’s Land) the English common law was adopted and applied. It was later modified by the Governor on the advice of the Legislative Council and later the Parliament of Van Diemen’s Land. With Federation in 1901 the Commonwealth was not granted an express power to legislate on criminal law matters. Consequently, the States retained primary responsibility for their own criminal laws. The main sources of criminal law that concern this thesis are Tasmania’s Criminal Code (established under the *Criminal Code Act 1924* (Tas)) and other State legislation, particularly the *Youth Justice Act 1997* (Tas).

The timing of the beginning of the research was fortunate. It began in January 2000, one month before Tasmania’s youth justice system was completely restructured with the proclamation of the *Youth Justice Act 1997* (Tas). Previously the police had two options when dealing with young offenders who had admitted to an offence: to caution the youth and not proceed with the matter, or to refer the matter to the children’s court. The Act introduced a four-tiered system involving informal cautions, formal cautions, community conferences, and the children’s court. The first two tiers, the informal and formal cautions, are processes conducted by the police. Formal cautions are held at police stations and usually include the offender’s parents. Unlike any other Australian formal cautioning system, victims can attend formal cautions in Tasmania. Formal cautions can result in the young offender agreeing to complete undertakings, including up to 35 hours community service and actions to repair the damage caused to the victim. Community conferences, the third tier, are based on a format developed in New Zealand called family group conferences. Both formal cautions and community conferences can deal with quite serious offences, such as sexual assault, wounding, and grievous bodily harm.

Community conferences involve the offender, the victim, their respective supporters, and a police officer. An independent facilitator, employed on a contractual basis by Tasmania's Department of Health and Human Services (DHHS), convenes the conference. Each person is given the opportunity to talk openly about their perspective of the offence, its impact, and their hopes and fears for the future. Together the group attempts to agree upon ways in which the young offender can repair the emotional and material harm caused by her or his actions. These undertakings can include up to 70 hours community service as well as actions for the benefit of the victim and others. Unlike the agreements reached in a formal caution, the undertakings arising from a community conference are enforceable at court. In other words, if the young offender fails to complete their undertakings, the DHHS notify the police and the police can refer the matter to court.

Ostensibly the system established by the *Youth Justice Act 1997* (Tas) seems unremarkable – quite similar to the South Australian juvenile justice system in many respects. However, a complicating factor about Tasmania is that the police are conducting the 'formal cautions' as juvenile conferences. This means that Tasmania essentially has two conferencing systems operating side by side, one operated by the police and the other operated by the DHHS. This development makes Tasmania's system most unusual because, internationally, different jurisdictions have chosen either police-run conferencing or independently facilitated conferencing. The police and DHHS conferences are the focus of my thesis.

The thesis contains eight chapters. The first three chapters are descriptive chapters that lay a foundation for the remainder of the thesis. Chapter one provides a vital international theoretical context for the developments in Tasmania and for the results yielded from this study. It describes a new theory of criminal justice: 'restorative justice'. Restorative justice is a rapidly evolving theory which argues that the criminal justice system should empower victims, offenders, and the communities from which they come to deal with the aftermath of crime. The origins of restorative justice are described, together with its values and objectives, and the way in which restorative theory tends to view the traditional criminal justice system. Different themes that are emerging in

restorative justice are discussed. This chapter is essential for the entire thesis, but it is particularly important for chapter seven.

Chapter two moves the thesis towards juvenile conferencing practice, which is recognized as a form of restorative practice. It discusses many of the key findings that have been produced to date on conferencing and then contrasts the conferencing systems that have been established in New Zealand and Australia. Three significant issues are analysed in detail. The first is the complexities involved in successfully diverting significant proportions of young offenders away from court, which is one of the central objectives of the new Tasmanian juvenile justice system. The second issue is the phenomenon known as 'net-widening'. This generally refers to an unanticipated increase in the number of young people having formal contact with the criminal justice system. It can occur as a result of attempts to divert offenders away from court to alternatives such as conferences. Finally, chapter two highlights the heated debate that took place in Australia over police conferencing and considers the use of police conferencing in the United Kingdom and North America.

Chapter three is devoted to the developments that have taken place in Tasmania's youth justice system. It provides a useful historical background by describing some of the tensions that existed in juvenile justice policy that predated conferencing and restorative justice. The chapter goes on to explain how these tensions influenced policy formation in Tasmania. Developments in practice are also outlined, the most important of which was the police initiative to trial conferencing in 1995. It becomes clear in this chapter that the new juvenile justice system in Tasmania evolved in a relatively unplanned manner.

The fourth chapter presents one of the major contributions of this thesis. That is, statistical analyses that were performed using the central police database in Tasmania. The analyses provide data on young offenders across Tasmania from 1991 to May 2002. It is important to note that the information presented in this chapter was not available in government reports or attainable from any other agency. Until 1991 the Department of Community Services produced extensive annual reports on juvenile offenders. In 1991 the department was restructured and is now the DHHS. Since 1991 the reports on juvenile offenders included in the Parliamentary Papers have included very little useful

information, at least nothing that can address the research questions relevant to this study.¹ The chapter describes the source of the data and how the statistical analyses, in particular regression analyses, were performed. The results provide quite clear evidence relating to three research questions that should be of interest to other conferencing system in Australia and overseas. Is the new Tasmanian system successfully diverting young people away from court? Is net-widening occurring? Have the court's sentencing patterns changed with the introduction of the new system?

In chapter five I compare and contrast the methods used to recruit, train, and monitor police facilitators and DHHS facilitators. The chapter highlights the problems involved in forcing police officers to train as facilitators. The discussion explores many practical interrelationships between training, monitoring, and practice standards. Chapter five dovetails well with chapter six, which presented the findings arising from the observation of 67 police and DHHS conferences.² Six thematic areas are examined including (a) the basic features of the police and DHHS conferences, (b) the impact of the experience of the facilitator, (c) pre-conference preparation, (d) the facilitators' explanations of the legal context of the conference to the conference participants, (e) the facilitators' approaches to conferencing, (f) and the undertakings agreed upon.

A completely new direction for restorative theory is presented in chapter seven. This new direction concerns the place of the parents of young offenders in restorative justice. The chapter builds significantly upon ideas first presented in an article I wrote during the course of the research (Prichard, 2002). This chapter urges restorative theory to make a unique space for parents. Parents may view themselves as part-contributors to the offence committed by their child. They may simultaneously view themselves as victims of the criminal behaviour. In discussing how to practically respond to this 'contributor-

¹ The reports include information such as the annual cost of juvenile detention and the number of reports tendered to the courts by the DHHS.

² In the early stages of the research six conferences (three police and three DHHS) were observed partly to help formulate the methodology. Thirty-one police conferences and thirty DHHS conferences were then observed employing the methodology.

victim paradox' I draw heavily upon my qualitative observations of conferences as well as psychological literature on parental self-efficacy (or self-confidence) (Coleman & Karraker, 1997). Chapter eight concludes the thesis and reflects on its contributions to policy, practice, restorative justice theory, and criminology.

CHAPTER ONE

RESTORATIVE JUSTICE

The purpose of this chapter is to describe a perspective of criminal justice called restorative justice. Restorative justice has developed over the past three decades in an organic way and has been described as a worldwide movement (Morris & Maxwell, 2003). Restorative justice originated from diverse philosophies of justice, as well as different political, cultural and social movements (Crawford & Newburn, 2003). Arguably the common feature of these perspectives is that they share the view that 'because crime (or any other kind of injustice) hurts, justice should heal' (Braithwaite, J. and Braithwaite, V., 2001: 4).

A very wide variety of restorative practices exist internationally. A well accepted definition of a restorative practice is 'a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future' (Marshall, 1999: 5). Restorative principles are being applied to overcome conflicts in workplaces and schools (Condliffe, 1998). Theoretical applications are being considered for the International Court of Justice (Dignan, 2003) as are means of using restorative justice to resolve inter-state conflict (Ahmed et al., 2001). Inside the criminal justice system restorative justice is being practised or trialed for juvenile and adult offenders (a) as a means of diversion from court, (b) as pre-sentencing and post-sentencing options, and (c) in post-prison release programs.³ The variation in the actual format of these practices is very broad (Crawford & Newburn, 2003). Some examples which clearly embody restorative justice aims include victim-offender mediation and circle sentencing – informal community forums, attended by victims and offenders, which come to a consensus on sanctions and are facilitated by a judge (Cunneen & White, 2002). Other formats are gaining popularity in North America, such as citizen sentencing panels (called community reparative boards)

³ Pre-execution restorative programs have also been trialed. For a critique of this practice see (Hoyle & Young, 2003).

and special victim centred hearings run as an adjunct to court proceedings by judges (Bazemore, 1997b). Juvenile conferences are one of the best known restorative practices (Maxwell & Morris, 1999).

There are two reasons why restorative justice is important to this thesis. First, in Tasmania restorative theory influences police and Department of Health and Human Services (DHHS) juvenile conferences in different ways. Secondly, research on juvenile conferencing is deepening and strengthening restorative theory. Although this thesis is primarily about juvenile conferences some of my findings have important implications for restorative theory, especially the ideas presented in chapter seven which concerns the place of the parents of offenders in restorative justice.

The chapter has four sections. The first section outlines the origins of restorative justice. The second section explains the central values and objectives of restorative justice. The following section describes how restorativists see these values and objectives as different from the traditional justice system. Finally, some of the emerging themes of restorative theory are considered.

1.1 ORIGINS OF RESTORATIVE JUSTICE

The development of restorative justice since the 1970s is sometimes explained as the convergence of a variety of ideologies and movements which articulated inadequacies in the criminal justice system (Cunneen & White, 2002). These ideologies and movements ranged from peace-making, communitarianism, and indigenous dispute resolution, to the victims' rights movement (Van Ness, 1993; cf Bottoms, 2003). Important too, were the growing critiques of justice systems based on retribution or rehabilitation (Warner, 1997). This debate was especially relevant to the juvenile justice setting and is explained in an historical context in chapters two and three. Further influences upon restorative justice included problem-oriented policing, which emphasised community 'resources' and prompted new approaches to criminal justice (Goldstein, 1990). In criminology, left realism encouraged critical evaluation of the criminal justice system and its class assumptions (White & Haines, 2000). Academically, one of the single most influential sources has been Christie's oft-quoted 1977 lecture, in which he charged the Western state of 'stealing' the resolution of conflict from those most affected by crime – the

victim, offender, and their community (Christie, 1977). As well as defining the processes for dealing with the aftermath of crime, the state has imposed its own definition of harm: that criminal behaviour is a crime *against the state*. Christie's catchword seems to have encapsulated general concern for the place of the individual in modern society.

'Unfettered competitive individualism' (White, 2000: 55), industrialisation, population growth, and urban drift (Palk et al., 1998) are all factors charged with dislocating the modern person, disintegrating communities, and widening the proximity between victims and offenders.

1.2 VALUES AND OBJECTIVES OF RESTORATIVE JUSTICE

One core concept of restorative justice is that crime is defined as an injury suffered by victims and communities (Morris & Young, 2000). Along with offenders, victims and communities are central to resolving crime. These three entities – offenders, victims and communities – seem to have become the central framework of restorative justice.

Bazemore (1997b), for instance, sees the common ground between offenders, victims, and communities as the fertile ground for restorative justice (seen shaded below in Figure 1.2).

Figure 1.2 The interaction of the central parties to restorative justice.



Of course, restorative justice depends on support by the state. Various types of 'professionals' organise and facilitate the restorative forums. However, the principle of 'deprofessionalisation' urges that professional input be minimal, unobtrusive, and empowering for the main parties with whom the decision making rests (Zehr, 1990: PP).

Restorative justice generally values informalism and natural dialogue (Morris & Young, 2000; cf White, 1994). It does not seek to label the stakeholders in an offence with strictly defined roles. It is understood that the boundaries between the constructs 'victim', 'offender', and 'community' blur. For instance, victims and offenders often are in some way or another members of the same community. A juvenile offender may well be the victim of domestic violence (Ahmed et al., 2001). Likewise, the victim of a particular offence may simultaneously be the perpetrator of some other wrong. Finally, some offensive behaviour does not affect specific individuals (or corporations such as department stores), in which case it seems appropriate to view the community as the victim. These types of offences are often referred to as 'victimless crimes'. In a sense the community is always injured by crime and hence is always a victim.

Most theorists would agree that for a process to be called restorative it *must* ensure (a) non-domination of any party, (b) empowerment, (c) respectful listening, and (d) accountability of the offender (Braithwaite, 2003). Non-domination and empowerment dovetail neatly together – participants should feel safe, unthreatened, and fully able to contribute their experience, feelings, uncertainties, and thoughts for the future. Respectful listening obviously requires that participants are able to communicate in their own manner and at their own pace. Arguably, implied within this value is the necessity that restorative forums not be time constrained. Accountability requires that offenders squarely discuss the facts of their actions. For this reason restorative justice has no place in proceedings where the guilt or innocence of a defendant is determined. As chapter two will explain, in many jurisdictions restorative forums are only possible when the offender has admitted their guilt. This differentiates restorative justice from mediation. Restorative justice begins with an acceptance of the major facts, whilst mediation may take place with central facts still in dispute (Moore & Forsythe, 1995). Accepted accountability by the offender and natural dialogue about the crime means that victims may have the opportunity to understand why the offence occurred and whether they are likely to be the target of crime again (Daly, 2003).

The four values just discussed are essential requirements of restorative justice. Other restorative values concern the decisions that the parties may choose to make together: (a) reparation for the victim, (b) rebuilding the dignity of the offender, and (c) social support for offenders and victims. First, the group may decide that it is appropriate for the

offender to provide emotional or material reparation to the victim or others, through symbolic or practical acts. Secondly, it may be hoped that participating in the group decision concerning reparation as well as seeing those plans to fruition may help to rebuild the dignity of the offender. Many authors have emphasised that restorative justice allows the offender to be active instead of passive (Walgrave, 1995). Thirdly, the support of friends and family for victims and offenders is especially important and, if possible, the wider community (Braithwaite, 1999). Victims may view social support as tangible evidence that the community recognises their injury. Hopefully, not only does the offender benefit from realising how important they are to their significant others but also these relationships can be strengthened by the process. Some theorists view restorative justice meetings as an opportunity to deal with wider problems in the offender's community. The symbolic or practical acts of the offender, therefore, may be directed towards their community (White, 2000). With a greater understanding of the impact of crime restorativists anticipate that offenders will be less likely to re-offend. Consequently, communities may hope to experience less crime.

There are certain dynamics between the major parties that restorative justice values very highly indeed but which cannot be manufactured or designed by anyone (least of all police officers, welfare workers, lawyers and the like) (Braithwaite, 2003). These are signs of a genuinely restorative meeting: (a) remorse over injustice, (b) apology, (c) forgiveness, (d) mercy, and (e) community cohesiveness. For the offender, experiencing remorse, offering apology, and receiving forgiveness and mercy are viewed as genuine healing. Compassion by all parties for each other is viewed as the best atmosphere for holistic healing and in this sense hate and anger are seen as counter productive for all. Although forgiveness is heavily dependent upon the victim, the community via other participants may also offer forgiveness. Additionally, restorativists anticipate that victims benefit from expressing forgiveness. It is hoped that the participants are supported by their communities and even that community spirit is enriched by the process (White, 2000).

1.3 RESTORATIVE PERSPECTIVES OF THE CRIMINAL JUSTICE SYSTEM

The criminal justice system has several interlocking parts. These parts have not been planned so that they operate cohesively. In fact, 'to refer to a 'system' is ... merely a

convenience and an aspiration' (Ashworth, 2000: 59). There is an overarching tension in the restorative literature as to the long term goal of restorative justice. Should it attempt to replace the criminal justice system altogether? Are the objectives of restorative justice and the criminal justice system capable of coherent co-existence (Duff, 2003)? Or is it better to simply attach restorative initiatives to the existing criminal justice system in the few places where they are unquestionably useful instead of 'waiting for the restorative revolution' (Warner & Gawlik, 2003: 70)?

Restorative justice advocates have argued that restorative practices are superior to many aspects of the sometimes inefficient and expensive criminal justice system (Crawford & Newburn, 2003). The courtroom has attracted much criticism from restorativists. In the courtroom the offender is a passive onlooker, called at best to give evidence or to address the court, but essentially reliant upon legal advocates and controlled by professionals of various sorts (Bazemore & Umbreit, 1995). Though indirect apologies and expressions of sorrow or regret by the offender do occur, the offender can achieve little personally to repair the damage caused by their crime. All the offender has to offer is their liberty (Palk et al., 1998).

A greater area of discussion concerns the aims of sentencing once the guilt of the offender is established. Amongst some restorative justice theorists it was popular to present the sentencing aims of the criminal justice system as confined to state actions *upon* the offender: (a) punishment/ retribution, or (b) rehabilitation (see Zehr, 1990; Bazemore, 1997b).

1.3.1 Retribution

Retribution is a rationale for the punishment of offenders that is 'invoked in a number of different ways' (Warner, 2002: 86). In its simplest form, retribution suggests that punishment is justified because wrongdoers deserve to suffer for their wrongdoing (Fox & Freiberg, 1999). A different perspective of retribution is the modern theory of just deserts, which will be discussed presently. Retribution has been presented as the preferred approach of conservative political perspectives (Hogg & Brown, 1998). Its appeal to policy makers and the public was claimed to rest upon the ability of punishment to display community disapproval, to denounce crime, and to make

criminals pay. In contrast to the healing potential of forgiveness, empowerment, and accountability that restorative justice offers, retribution promotes the infliction of pain upon the offender (Zedner, 1994). Moreover not only does it promote the infliction of pain but some theorists would point to the body of evidence, which I have summarized elsewhere, that indicates imprisonment harms offenders and even increases recidivism (Prichard, 2000).⁴

Many criticisms were extended to one influential hybrid of retributive philosophy, called the theory of just deserts (von Hirsch, 1993). In addition to pure retributive aims, just deserts theory sees a further value in punishment – its capacity to communicate censure or blame ‘mainly to the offender but also to victims and society at large’ (Ashworth, 2000: 72; von Hirsch, 1998). The central contribution of desert theory concerns calculating appropriate levels of punishment with the guide of proportionality. Proportionality considers the relative seriousness of crimes, a ranking to a scale of punishment, and requires that the ‘penalty should not be out of proportion to the gravity of the crime involved’ (Ashworth, 2000: 72). Restorative critics have suggested that deserts theory has had negative ramifications – essentially providing a renewed legitimacy to punishment and equating legal sanctions with pain and discomfort for adult and juvenile offenders alike (Pettit & Braithwaite, 1993; Bazemore & Umbreit, 1995).

However, many of the arguments presented by restorative writers against retribution have been criticised as over simplifications (Crawford & Newburn, 2003). Daly and Immarigeon (1998) in particular pointed out that deserts theory is only one of a number of retributive theories. In his hybrid theory von Hirsch includes general deterrence as a prudential reason for punishment (von Hirsch, 1998). Portraying deserts theorists as advocates of harsh treatment is also a misrepresentation. Desert theorists are concerned with systemic fairness (treating like cases alike) and preventing, in particular, disproportionately high sentences. Whilst some jurisdictions that have implemented desert theory have witnessed increases in the length of prison sentences, California being one example, others have actually recorded overall reductions, namely Finland, Sweden, and Minnesota (Ashworth, 2000). In fact, recently one commentator has spoken of the

⁴ A litany of sources have claimed that prisons (a) dislocate inmates from their families and positive role models, (b) stigmatise inmates and their families, (c) decrease employment opportunities; educate inmates in criminal techniques, (d) expose young criminals to sexual assault, extreme violence and drug abuse, and (e) neutralise senses of morality (Clayton, 1970; Hawkins, 1976; Heilpern, 1998; Leopold, 1969; Martin & Webster, 1971; Mathiesen, 1990; Morris, 1995; Sykes, 1956).

‘common strategic agenda’ that both restorative justice and deserts theory share (Dignan, 2003: 153). That is, the reform of the prison system and the avoidance of excessively repressive dealings with offenders. Dialogue between restorativists and desert theorists is arguably more conciliatory now than it was in the 1990s (see for example contributors to von Hirsch, Ashworth and Shearing, 2003).

1.3.2 Rehabilitation

The welfare model essentially recognises that environmental and pathological factors can influence some offenders to commit crime. The response, therefore, is to treat offenders in some way to counteract these influences. In the case of young offenders treatment might vary from cognitive behaviour therapy, to removal from their home environment, to counselling. Since the welfare model recognises social inequalities to a degree it has traditionally been aligned with less conservative political ideologies. The welfare model does not have a strong political status, primarily because treatment does not involve retribution or punishment, seems unrelated to the offence, and focuses upon the needs of offenders (Bazemore & Umbreit, 1995). From the perspective of disservice to offenders, the welfare model has been criticised for devitalizing offenders and engendering helplessness, as well as intimating to offenders that they are not accountable for their own behaviour (Bazemore & Umbreit, 1995). Along with others, restorative writers have pointed to some of the excesses and inconsistencies that occurred under rehabilitative models (Braithwaite, 1999). Serious offences sometimes ended in short periods of treatment whilst minor offences could result in extensive periods of rehabilitative incarceration. Indeterminate or semi-determinate sentences placed too much control in the hands of rehabilitative professionals as well as prison and probation authorities, undermining individual rights (Ashworth, 2000). Worse, research could not confirm that any of the therapies employed had any positive effect whatsoever (Seymour, 1988). Disheartening to say the least, the concept that ‘nothing works’ resonated particularly in the juvenile justice setting and led in part to calls for radical non-interventionism for young offenders (White & Haines, 2000). In short, welfare responses have been charged with being inconsistent, ineffective, and often unjust.

A criticism that restorative justice levelled at both retributive and rehabilitative responses to crime is that they result in state action – punishment or treatment – and the inaction

or passivity of the offender (Braithwaite, 1999). Perhaps the most damning evidence against both the punishment model and the welfare model is that the earlier in life that offenders are dealt with by the criminal justice system the greater the likelihood that they will re-offend (Hope, 1998). Also, Gold and Williams' (1970) rigorous British study found that youths who were charged and processed through the legal system were more likely to re-offend than those who had committed similar offences but had not been charged. Chapter three highlights that these concerns were also influential in the development of means of diverting young people away from court in the 1960s onwards.

1.3.3 Victims and Communities

In a strict legal sense, because the criminal justice system sees victims and communities as members of the state it believes that it is acting on behalf of the victim and the community purely by prosecuting the offender (Morris & Young, 2000). From the restorative perspective, although all members of society undoubtedly benefit from the rule of law and the maintenance of peace, the criminal justice system does not address the fact that the victim and community have a closer proximity to the criminal act than the rest of society (Zehr, 1990). In order of importance of those affected by crime, the criminal justice system has placed the state first, victims a distant second, and communities an even more distant third.

As with offenders, the role of victims in the courtroom is symptomatic of their significance to the criminal justice system. Victims may be required to give evidence and thus are valued by prosecutors. However, the concept of the criminal act having been committed against the state predominates. Victims' needs are largely ignored and in effect become secondary to the interests of 'judges, prosecutors, probation officers, treatment providers, and even the offender' (Bazemore, 1997a: 201). The victim can of course initiate a civil action against the offender. But apart from the fact that civil actions lack the symbolism of social concern that is arguably present at criminal trials, victims' needs are broader than monetary compensation. Victims are denied the opportunity to express their suffering in their own terms – personal stories are broader and infinitely more varied than legislative definitions of crimes (Ahmed et al., 2001). Victims frequently have no knowledge of the offender's situation and their motives for committing the crime. Lacking too is the potential for personal apologies from

offenders, or for victims' wishes to influence offenders' sanctions (Braithwaite, 1999). The influence that victims should have upon offender's sanctions are one of the complexities in the debate on proportionality, discussed below.

'Communities' are not as easily defined as are 'victims' or 'offenders', at least in the setting of large cities. Indeed, restorativists continue to discuss the meaning of community (Walgrave, 2003). Nevertheless, in practical terms 'the community' at least includes the relatives and friends of both the victim and the offender, and any other citizen effected by the crime. Though it is not denied that most offenders at some stage make a cogent decision to commit crimes, many criminologists claim that a vicious circle exists between crime and community disharmony. Community disharmony and social inequalities engender crime, and crimes further corrode harmony within communities (Blagg, 1998; White, 2002). Myopic attention to offenders ignores the ruptured social bonds that are interrelated with crime (Zedner, 1994). The assertion that crime is related to community disharmony and social inequality is supported, at least in the context of juvenile crime, by the social and offence profiles of young offenders. The typical juvenile criminal is male, has a low income or is unemployed, has weak parental bonds and has a low level of educational achievement (Goldblatt, 1998). Extreme recidivism amongst juveniles is positively correlated with many factors including: attempted suicide: brain damage or a low intelligence quotient, sexual, physical or psychological abuse, a long history of truancy; personal drug or alcohol abuse; weak parental bonds, drug or alcohol abuse within families, psychological disorders within families, domestic violence, death of a family member, and moving place of residence often (Maxwell & Morris, 1999; Braithwaite, 1987; Wundersitz, 1996b).

1.4 EMERGING THEMES OF RESTORATIVE JUSTICE

An interesting way to analyse the emerging ideologies of restorative justice is to consider the different emphases that are placed upon the central parties, the victim, the offender or the community.

1.4.1 *Victim-oriented restorative justice*

Bazemore (1997a) argued that some forms of restorative practices, such as victim-offender mediation, promote a vision of restorative justice where the victim is the central figure. His main concern was that the restorative goals set for victims colour the perception of offenders and communities – both are perceived in terms of what they can offer the victim. My own experience at a restorative justice conference in Europe⁵ suggested that, with the exception of Ireland and the United Kingdom, this victim-focused ideology was prominent in that region (cf Crawford & Newburn, 2003). The content of the presentations and conversations with practitioners revealed a lack of knowledge of types of restorative practices other than victim-offender mediation. In fact, victim-offender mediation was used in the context of being synonymous with restorative justice. There was also a noticeable absence of discussion of the place of communities in restorative justice. One academic agreed with my observations (Aersten, pers. comm., 14/10/2002; see Walgrave & Aersten, 1996; for comparisons of restorative visions in Europe and North America see Walgrave, 2003: 85-86).

1.4.2 *Offender-oriented restorative justice*

In Bazemore's view (1997a) the theoretical mainspring of this theme is Braithwaite's (1989) classic theory of reintegrative shaming, which is described in more detail in chapter seven. Braithwaite (1989) took the threads of dominant criminological traditions and particular sociological observations and wove a new theory which explained how informal social controls can be used to curb criminality. The theory suggests that shame can be used constructively to discourage criminality when elicited in ceremonies attended by the offender's 'community of concern', or significant others, and in the backdrop of an overarching affirmation of the offender. In this way offenders can be reintegrated back into their community of concern. However, the use of shame without socially embedded forgiveness may lead to stigmatisation and ultimately increased criminal behaviour.

⁵ 'Restorative Justice and its Relation to the Criminal Justice System', 10-12 October, *European Forum for Victim-Offender Mediation and Restorative Justice*, Oostende, Belgium.

Braithwaite wrote his theory before learning of juvenile conferencing in New Zealand but has explicitly accepted that conferences meet his concept of a reintegrative shaming ceremony (Braithwaite, 1999). Braithwaite was involved with David Moore and others in introducing juvenile conferencing to Australia in a pilot scheme in Wagga Wagga (see further, Powers, 2000). The model they developed, referred to as the Wagga model, was influenced by reintegrative shaming but also, through Moore, affect theory and script theory (Nathanson, 1992; Tomkins, 1963; cited in Harris, 2001). Moore's (1993) contribution offered a psychological explanation for the effectiveness of reintegrative shaming. One important implication of affect theory was that all participants in a conference (a) would be experiencing different emotions, (b) through dialogue could move away from negative affects, and (c) particularly in discussion of reparation could collectively move towards the affect of interest/excitement where true reconciliation and reparation would occur.

These early ideas have been enormously influential in juvenile conferencing in the Australian Capital Territory, and parts of the United Kingdom, Canada and America. As described later, the Wagga model has also influenced police juvenile conferencing in Tasmania. Reintegrative shaming has been further developed by Braithwaite and his colleagues using the results of a very large experiment conducted in Canberra (Ahmed, et al., 2001; Harris & Burton, 1998). The application of affect theory to restorative justice has been refined in various ways by individuals connected to the original Wagga Wagga scheme (Moore, & McDonald, 2001).⁶

Volley of criticisms have been directed towards the use of these theories for restorative justice and, as explored in the following chapter, the use of the Wagga model in juvenile conferencing. The focus on deliberately inducing or manipulating shame in offenders, as advocated in Braithwaite (1989) and Braithwaite and Mugford (1994), has been criticised as excessively controlling, stigmatising, and actually counter to restorative aims (Morris & Maxwell, 2000; Blagg, 1998; White, 1994; Polk, 1994). Others have warned that the influence of affect theory could cause practitioners to develop an unrealistic and rigid emotional map of a restorative forum, such as a juvenile conference, causing them to

⁶ See further <www.realjustice.org/>.

treat parties inappropriately if they do not display expected emotions (White, pers. comm., 17/02/02).

Bazemore (1997a) claimed that reintegrative shaming was offender-oriented because of its emphasis on 'correctly' shaming criminals so that they will not re-offend. Arguably this was clearly evident in early applications of the theory to restorative justice, namely in juvenile conferences (Braithwaite & Mugford, 1994). Victims and communities of concern were regarded as important mainly to (a) prompt the offender to recognise the impact of their crime and feel shame, and (b) provide a context of love and acceptance for the offender. In terms of meeting community needs there is little more than a 'hope' that communities will develop better capacities to manage crime (Bazemore, 1997a: 213; Sandor, 1993, 1994; Polk, 1994; White, 1994). Braithwaite (1994; 1999) accepts that social factors are related to crime but sees that these complex questions should be tackled outside of the juvenile conference. The 'moment' of the restorative justice forum is most importantly a chance for the offender to develop a new perspective of their crime and to attract the offender to the people who are most interested in their welfare.

It is difficult to gauge to what extent these criticisms apply to recent adaptations to reintegrative shaming by Braithwaite and his colleagues (Ahmed et al., 2001). It seems that Braithwaite is now placing more emphasis upon reintegrative shaming as a very useful framework for academic research into the emotional dynamics of restorative justice (Braithwaite, J. & Braithwaite, V., 2001; Braithwaite, 2003). Less evident are notions that knowledge of reintegrative shaming theory is crucial for practitioners.

1.4.3 Community-oriented restorative justice

The third ideological arm of restorative justice is oriented towards communities. Whereas the first and second themes either ignore communities or see them as a source of support for victims or offenders, this third theme generally views the community as the epicentre of restorative justice. By insisting on 'meaningful community participation... in solving problems, resolving conflicts, and building or rebuilding damaged relationships' the community can attack 'the primary cause of crime': the breakdown of community relationships (Bazemore, 1997a: 203). This orientation is not supposed to disadvantage victims or offenders. Quite the opposite – communities

actually should be better able to meet the needs of these parties because it has a closer proximity to them than does the criminal justice system.

One example of community-oriented restorative theory is the balanced and restorative justice model, or BARJ (Pranis, 1998). Amongst other things, BARJ requires that the community provide the offender with roles that are valued by others in areas which the offender has some potential. Community bodies, such as employers, civic groups, and charities, are called to offer tasks which build on the strengths of the offender, aiming to instill a 'sense of belonging, usefulness and control' (Pranis, 1998: 19) thereby providing an incentive to abide by the norms of the community. Instead of adding or altering single restorative justice programs, the aim of BARJ is to promote a systemic change in ethos towards its holistic approach to restorative justice.

A more recent theoretical development seeking community ownership of restorative practices is restorative social justice (White, 2000; 2003). This model deals with restorative responses to juvenile offending alone. With a strong interest in politically and socially weak members of society, restorative social justice seeks community empowerment by 'enhancing the welfare and prospects' of the collectivities to which victims and offenders belong – neighbourhoods and extended families (Cunneen & White, 2002: 379). Interesting aspects of this model are that, first, it suggests that the reparation that a youth agrees to undertake should be directed towards practical needs of the community that would enable it to break cycles of crime. Restorative social justice also advocates for very lateral and original strategies in mapping community resources that might support restorative justice. School buildings, for example, could be used out of hours for any number of programs directed both at young offenders and community spirit. The skills of residents, associations, and institutions can be drawn on in ways that work for each community. Most important, repairing crime is viewed as repairing social harm. Whilst empowering victims and offenders is valued, restorative social justice argues for the inclusion of a broad range of interested parties.

Community-oriented restorative justice is optimistic about achieving change in the offender's social environment. It considers the restorative justice forum as the beginning of a process in which the offender's problems are tackled via their social surroundings. There is also a strong belief that communities will be willing to participate in restorative

justice forums. However, exactly how to define the 'community' for the purposes of restorative justice is problematic and a matter of debate (Walgrave, 2003). In each case the parties may identify with different 'communities', be they defined by geography, ethnicity, religion, culture, socio-political values, and so on. In many cases it may be difficult to represent these communities in a meaningful way in a restorative forum. Or it may be the case that a party rejects the community with which they once identified (see Maxwell & Morris, 1993). Perhaps the challenge for restorative practitioners is to be ready to respond to and make use of communities only when they are identifiable?

CONCLUSION

Restorative justice theory is optimistic about change and dealing with the crisis of each crime in a positive way. Though new, undoubtedly the restorative movement is continuing to gather momentum around the world. Experience indicates that putting restorative principles into practice even in a small pilot scheme presents numerous difficulties (McCold & Wachtel, 1998; Hoyle et al., 2002). Vastly more ambitious have been the schemes established to change the juvenile justice systems of whole jurisdictions, as has occurred in New Zealand and parts of Australia. Some of the complex problems encountered by juvenile conferencing schemes – large and small – are the topic of the next chapter.

CHAPTER TWO

JUVENILE CONFERENCES

The growth of restorative justice over the last few decades coincided with the establishment of family group conferences in New Zealand in 1989. Intense interest in the New Zealand initiative, combined with other factors, led to the rapid establishment of similar types of practices across Australia. These practices have some important differences, but generic terms for them are 'juvenile conferences' or simply 'conferences'. The basic format for a juvenile conference is a meeting between the young offender, the victim, and their respective family and friends. A facilitator convenes the meeting. Each participant is given the opportunity to discuss the impact of the crime. The group moves to consider ways in which the offender may repair the emotional and material harm caused. This may be achieved through one or more symbolic or practical acts, such as verbal or written apologies, working for the victim or the community, or attending counselling sessions. Conferencing is recognised internationally as a form of restorative justice (Maxwell & Morris, 1999; Bazemore, 1998b). Commentators have identified a great variety of problems with conferencing, only some of which are discussed in detail in this chapter. These range from diverse negative consequences for all those who participate in conferences through to the difficulties of maintaining legal safeguards for young offenders (see Braithwaite, 1999).

This chapter has two purposes. The first purpose is to continue a process begun in chapter one, that is, contextualising juvenile conferencing in Tasmania. To this end section 2.1 summarises the major findings from the research that has been conducted on juvenile conferencing to date. The results indicate that victims and offenders benefit in many ways from involvement in conferences. Most interesting, when conferences are run in line with the ideals of restorative justice they seem to have a positive impact on recidivism. Section 2.2 describes the development of conferencing in Australia during the 1990s and the emergence of two models for facilitating conferences, models which are still often referred to as the New Zealand model and the Wagga model. Section 2.3

compares some of the key features of the juvenile justice systems in Australia and New Zealand. Tasmania stands out as quite an unusual system, one that incorporates elements of both the New Zealand model and the Wagga model.

The second purpose of this chapter aims to lay the foundation for one of the key research questions that this study has sought to address. Is the new Tasmanian juvenile justice system diverting youths away from court? Section 2.4 compares the positive and negative experiences in Australia and New Zealand in attempting to achieve this goal. One problem is that in some jurisdictions not enough young offenders are directed to conferences by the police. It seems that the police discretion to direct youths where they see fit – their ‘gate-keeping’ role – can be affected by many factors, including biases. Section 2.5 analyses the phenomenon of ‘net-widening’, namely an unintended increase in the number of young people processed by the criminal justice system. This often occurs with the implementation of new initiatives like conferencing. My findings on diversion, gate-keeping, and net-widening in Tasmania are analysed in chapter four. Finally, section 2.6 analyses the controversial issue of whether police officers should facilitate conferences. Some authors simply cannot conceive of a less appropriate juvenile conference facilitator than a police officer. Others point to findings that indicate police officers can facilitate juvenile conferences well. The situations in Australia, the United Kingdom (UK) and North America are discussed. The issues raised in this section become fundamental to chapters five and six, which compare Tasmania’s police facilitators with its independently contracted facilitators.

2.1 RESEARCH ON CONFERENCING

One of the reasons why juvenile conferencing has become a major flag bearer of restorative justice is that research to date has yielded encouraging findings. Indeed, it seems that at least in this area of restorative justice ‘the claims of enthusiasts’ are not ‘running ahead of the evidence’ (Ashworth, 2000: 77). In some jurisdictions, such as New Zealand, it appears that conferences are a more cost-effective way of dealing with juvenile crime than court (Morris & Maxwell, 2003). Most victims and offenders who participate in conferences express satisfaction with their involvement. This has been a consistent finding across jurisdictions in Australia (Strang et al., 1999; Trimboli, 2001; Daly, 2003; Palk et al., 1998; Markiewicz, 1997), as well as New Zealand (Morris &

Maxwell, 2003), the UK (Hoyle et al., 2002; Jackson, 2001), and North America (McCold & Wachtel, 1998). Supporters of victims and offenders also generally report high levels of satisfaction with conferences (Morris & Maxwell, 2000; McCold & Wachtel, 1998; Hoyle et al., 2001). Some studies have found that the levels of satisfaction with conferences are far greater than victims and offenders report for their experiences of court (Ahmed et al., 2001; cf McCold & Wachtel, 1998). Satisfied victims report a variety of benefits from participating in conferences. These include being able to speak about their experiences of the crimes, having input into the process, gaining understanding about the offender and their motives for offending, reduced fear of the offender, and receiving a genuine apology (Daly, 2003). Positive outcomes reported by youths include involvement in the conference, satisfaction with the undertakings they agreed to, and improved relations with family members (Hoyle et al., 2002).

2.1.1 Recidivism

The evidence is mounting that conferences also help youths to desist from offending behaviour. The quasi-randomised controlled experiment conducted in the Australian Capital Territory found that – in comparison to court – conferences had a statistically significant positive impact on the re-offending rates of violent offenders aged 10 to 29 years (Strang, 2003). However, no differences were found between court and conference for property offences. Similar results were found in a North American study (McCold & Wachtel, 1998). Two studies with different designs placed conferences in the context of the lives of young offenders and found positive influences upon recidivism (Hoyle et al., 2002; Maxwell & Morris, 1999). The New Zealand study arguably yielded some of the clearest evidence to date on the ingredients of successful conferences (and by implication restorative justice). Nine composite variables proved to be significant predictors of youths not being reconvicted after their conference. These included for the offender (a) apologising genuinely to the victims in the conference, (b) participating in decision making, (c) agreeing with the outcome of the conference, (d) remembering the conference, completing the task agreed to, feeling sorry, and feeling that they had repaired the damage caused, and (e) not being made to feel a bad person (Maxwell & Morris, 1999: 42). (The remaining four predictive factors concerned the parents of the offender, but have not attracted much attention in the literature. These factors are discussed in chapter seven.) Maxwell and Morris' (1999) results suggest that reductions

in recidivism are most likely to occur when conferences are conducted in a restorative way (see also Daly, 2003; Daly & Hayes, 2002). This concurs with findings about other types of restorative forums. When restorative values are observed, reductions in recidivism appear later (Kurki, 2003; Latimer et al., 2001). Amongst other things, genuine apologies, offender remorse, equal participation in decision making, consensus, and the presence of the victim are factors reported to be correlated with reduced recidivism (Kurki, 2003). Deeper explanations of the ability of restorative justice to reduce recidivism vary. Braithwaite and his colleagues suggest that a combination of guilt and shame experienced by the offender is important for reintegrative shaming to take place (Ahmed et al., 2001). Maxwell (2001) disagrees and views empathy for the victim as the crucial factor. Hoyle et al. (2002) seem to place more emphasis on the offender experiencing procedural fairness in the conference. They point to Tyler's (1990) finding that offenders who perceive the justice system as fair are more likely to obey the law (see also Ahmed et al., 2001).

2.1.2 Negative outcomes of conferences for victims

Conferences can be highly charged and lengthy meetings that delve into the most personal of issues. Research indicates that the process can have different negative outcomes at times. Victims have reported that they (a) were not able to speak enough, (b) were asked too many questions, (c) were not supported, (d) felt intimidated by the number of the offender's supporters, and (e) became more scared of the offender (Maxwell & Morris, 1993). In Maxwell and Morris' (1993: 124) study, one third of victims felt worse after attending the conference – in some instances expressing 'depression, fear, distress and unresolved anger'. Victims also feel disillusionment if the agreements made in the conference are broken by the offender (Trimboli, 2000). However, it seems that better conferencing practices dramatically increase the satisfaction of victims. In particular, face-to-face briefing for the main participants – including the victim and the offender – increases the likelihood of victim satisfaction (Palk, et al., 1998; Morris & Maxwell, 2000; Hoyle et al., 2002). Cunneen and White (2002) have reported a case of post-conference victimisation – where friends of an offender assaulted a victim in retribution for the humiliation that the offender experienced during the conference. Finally, conferencing has met stiff opposition in some indigenous communities in terms of ramifications for all participants (Blagg, 1998;

Tauri, 1999).

2.1.3 Negative outcomes of conferences for offenders

Offenders also are vulnerable to negative consequences from conferences. There is some evidence that the legal rights of juveniles are more open to abuse in conferencing schemes than they are in the formal legal system. Youths have reported (a) not being informed of their rights when first charged, (b) feeling that they had no choice as to whether to attend a conference, (c) attending conferences without first making a clear admission of guilt, and (d) being intimidated by the police to attend a conference (Palk et al., 1998; Hoyle et al., 2002). On occasions the outcomes of different conferences concerning similar offences have been disproportionate and this has dissatisfied youths who perceive that they were treated harshly (Maxwell & Morris, 1993). These findings echo Warner's (1994) earlier concerns about abandoning the formal legal system (cf Morris & Maxwell, 2000). Many researchers have observed instances where youths have been treated in a stigmatising way during conferences (Bergen, 1999). In some cases this has appeared to be far worse than court proceedings could possibly be (Ahmed et al., 2001). Being made to feel a bad person in a conference appears to be related to future offending (Maxwell & Morris, 1999). In one case study it seemed that the youth's perceptions of a conference as unfair and bureaucratic lessened his respect for the law and contributed to later criminal behaviour (Hoyle et al., 2002). Another study found that up to one third of offenders did not feel that they were actively involved in the conference (Maxwell & Morris, 1993; Daly, 2003). As many as 25% of youths felt that their family or parents were the main decision makers (Maxwell & Morris, 1993). There has been an assumption in the restorative literature that heavy parental involvement is disempowering for young people and therefore is counter to the aims of restorative justice (Daly et al., 1998). However, chapter seven of this thesis challenges that view and considers whether heavy parental involvement can be in the best interests of the young offender in some cases (see Prichard, 2002).

The majority of writers do not view the negative findings just described for victims and offenders as serious enough to put the value of conferencing in question. Especially in New Zealand and Australia, where large scale conferencing systems have been established, it seems impossible to prevent failings from occurring altogether.

Commentators have argued that many of the problems observed in conferencing have been largely attributable to poor practice rather than inherent weaknesses or flaws (Young, 2002). Still, Daly (2003) rightly warns against complacency and wonders whether there is a threshold for negativities in conferencing, beyond which the existence of a scheme should be mooted.

2.2 JUVENILE CONFERENCING IN AUSTRALIA

The *Children, Young Persons and Their Families Act 1989* (NZ), which established conferencing in New Zealand, was influenced by a variety of approaches to juvenile crimes including (a) rehabilitative principles, (b) retributive principles, and (c) central concepts of diversion and decarceration (Maxwell & Morris, 1993). Some restorative constructs, namely victim-offender mediation, reparation and reconciliation, are recognised as influences upon the legislation, although the term ‘restorative justice’ does not appear in the Act or early descriptions of it (Maxwell & Morris, 1993). Chapter three will explain that a similar variety of impetuses lay behind the passing of new juvenile justice legislation in many Australian jurisdictions, including Tasmania. In particular, during the 1980s there was a move towards implementing policies fitting a ‘justice model’ – which amongst other things emphasised the protection of the legal rights of young people. Conferencing, and later restorative justice, became subsumed into these legislative changes.

In 1991, shortly after the New Zealand conferencing system was established, interested members of the New South Wales (NSW) police force instituted a pilot program with some similar features in Wagga Wagga (Moore & O’Connell, 1994).⁷ The use of police officers to facilitate the Wagga Wagga conferences was a significant departure from the New Zealand practice, which employs independent facilitators. The Wagga Wagga scheme was subsequently influenced by reintegrative shaming and affect theory (see 1.3). This influence became one of the defining features of the ‘Wagga model’ of conferencing. Operating in quite a strict paradigm, the police-facilitators would (a) not avoid – and even actively seek – dynamics in conferences which might elicit shame in the youth, (b) seek to terminate this shame with forgiveness, and (c) conceive other

⁷ The Wagga Wagga scheme was referred to as an effective cautioning scheme rather than a conferencing scheme (Moore & O’Connell, 1994).

participants in the conference as resources to achieve these aims (O'Connell, pers. comm., 10/1/2001). In contrast, the theories that influenced the facilitating practices in New Zealand were, and still are, much more varied. Some New Zealand facilitators insist that their practices are not influenced by reintegrative shaming at all (Daly & Hennessey, 2001). The influences of affect theory and script theory upon the Wagga model resulted in the use of conference scripts for facilitators (Moore, 1993). The scripts outline what the facilitator should say at certain key points of the conference, what format the conference should take, how the facilitator should deal with certain reactions and so on. The purpose of the script is to make each conference unfold according to a kind of psychological map. Following this map is supposed to maximise the opportunity for reintegrative shaming to occur. Moore (1993: 211) spoke of the 'remarkable similarity' between conferences 'regardless of the nature of the offence being discussed', adding that 'with few exceptions, participants move through the same sequence of emotions'.

The growth of conferencing in Australia was influenced by many factors including the political context of each jurisdiction (see Power, 2000). As noted, legislative changes to juvenile justice were already being mooted (O'Connor, 1997). Amid heated debate over the use of conferencing for juveniles *per se* as well as the attributes of the two models, parliamentary inquiries into youth crime and criminal justice responses were instituted in South Australia, Queensland, Western Australia and NSW itself (Alder & Wundersitz, 1994). Simultaneously, the Wagga model was trialed in Queensland, the Northern Territory, the Australian Capital Territory (ACT), and – as discussed in chapter three – Tasmania (Daly & Hennessey, 2001). The first legislatively backed scheme appeared in South Australia in 1993 (*Young Offenders Act 1993* (SA)). This was followed by new Acts or amendments to existing Acts in Western Australia (*Young Offenders Act 1994* (WA)), Queensland (*Juvenile Justice Act 1992* (QLD)),⁸ New South Wales (*Young Offenders Act 1997* (NSW)), Tasmania (*Youth Justice Act 1997* (Tas)),⁹ and the Northern Territory (*Juvenile Justice Act 1997* (NT)).¹⁰

⁸ Amended in 1996.

⁹ Proclaimed 2000.

¹⁰ Amended in 1999 and 2000.

Seemingly most of the jurisdictions, including NSW, have rejected the Wagga model in favour of the New Zealand model.¹¹ The Northern Territory is the only statutory based scheme that has clearly instituted the Wagga model. As discussed below (2.6.1), the Wagga model was used in the ACT by the Federal Police as part of the five-year Reintegrative Shaming Experiment (Trimboli, 2001; see also 1.3.2). The *Youth Justice Act 1997* (Tas) established ‘community conferences’ – based on the New Zealand model – and police formal cautions. Arguably because of an ambiguous description of formal cautions in the legislation, the police were able to continue the Wagga model conferences that they had been trialing prior to the proclamation of the Act in 2000. Tasmania appears to be the only jurisdiction in Australia, and possibly the world, which incorporates the New Zealand model and the Wagga model in the same system. Chapter three will explain in more detail what occurred in Tasmania.

The ‘Wagga’ and ‘New Zealand’ models are terms that are still used today.¹² Both approaches are now used in different parts of the world. From some perspectives the New Zealand model places more emphasis on involving families in making the decisions that affect them (Markiewicz, 1997). For instance, facilitators routinely pause conferences to give the offender’s family an opportunity to discuss ideas for reparation – which implies a strong emphasis upon empowerment of the family and deprofessionalisation (Jackson, 2001). The Wagga model arguably focuses more upon on the moment of the conference in terms of (a) restoration between the parties and (b) (for some practitioners) the successful reintegrative shaming of the offender (Jackson, 2001). Many, but not all, of the initiatives that employ the Wagga model are police led. In Britain many localised restorative justice projects have evolved. Jackson (2001) claims that some practitioners have not grasped the differences between the two models (see further Crawford & Newburn, 2003) while other practitioners are seeking to develop hybrid approaches. These comments are pertinent to the Tasmanian context where the practices truly have evolved without much deliberate planning – or theorising.

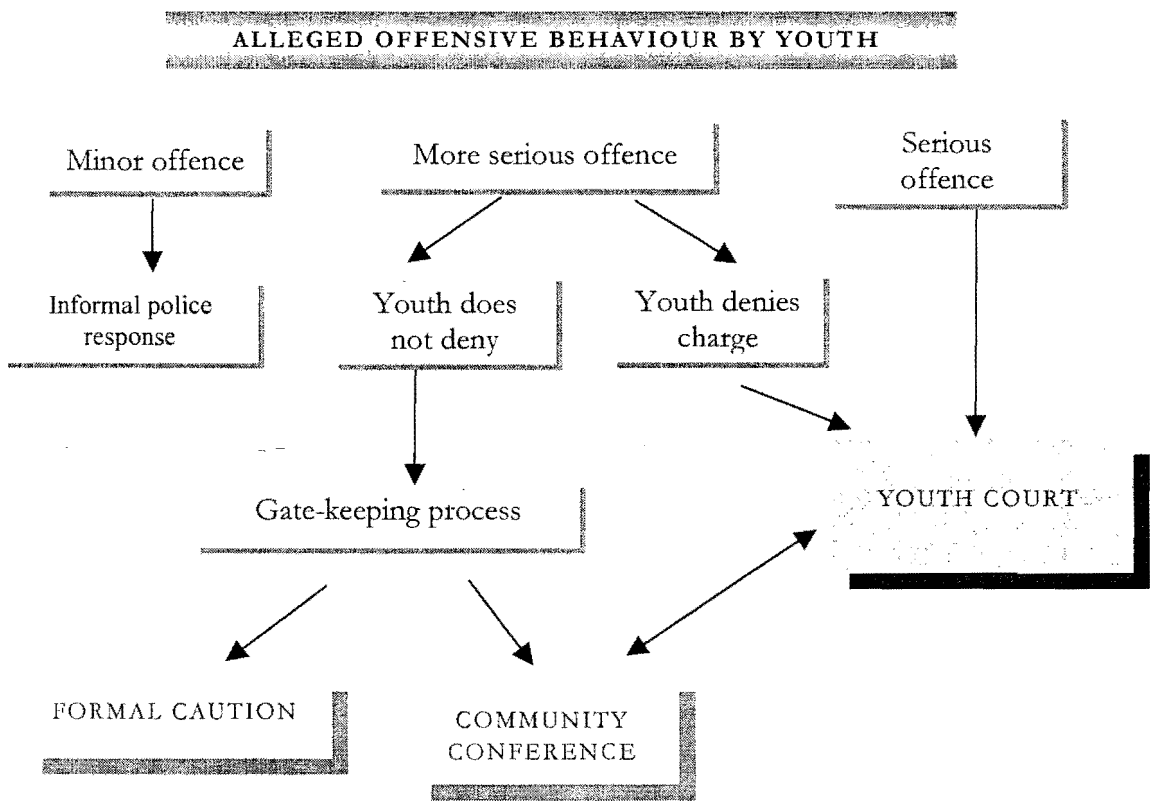
¹¹ Victoria began a pilot program of the New Zealand model in 1995 (Markiewicz, 1997). Recently this has been expanded to cover Melbourne, Gippsland, and Hume (Rebecca Grace, pers. comm., 26/06/2003). Grace is the Senior Project Officer in the Juvenile Justice Section of the Department of Human Services, Victoria.

¹² In some parts of Britain the Wagga model is referred to as the ‘Canberra model’, where it was employed for the five-year Reintegrative Shaming Experiment.

2.3 CONFERENCING SYSTEMS IN AUSTRALIA AND NEW ZEALAND

The basic framework of the systems in New Zealand and Australia are presented below in a generic flow chart (Figure 2.1). The discussion will first describe this general structure. Some of the important differences between the jurisdictions are then discussed.

Figure 2.1 A generic conferencing system based on systems in New Zealand and Australia



The systems uniformly apply to young people aged 10 to 17 years. One of the primary purposes of the new systems is to divert as many young offenders away from court as possible. For this reason police cautions and juvenile conferences are often called diversionary procedures. Minor offences are dealt with by informal police cautions. Where a youth has allegedly committed an offence of intermediate seriousness they are eligible to be diverted away from court. Juveniles who do not deny committing the offence are referred to a 'gate-keeping' process, in most cases run by the police.

Generally, during this process factors such as the seriousness of the offence, the youth's prior criminal history, and patterns of offending behaviour are reviewed (see further Maxwell & Morris, 1993). The case may be sent to court if diversion is not deemed appropriate. If a form of diversion is suggested, the consent of the youth will be sought and the young person may still elect to go to court.

Formal cautions are conducted by police officers at police stations. They are generally a simple format involving the youth, an officer, and a guardian or responsible adult. In some jurisdictions the victim is invited to attend. Typically, the purpose of the caution is to explain to the offender the possible consequences of future offending behaviour. A lack of remorse on behalf of the offender, aggression or similar indicators that the cautioning process is pointless may cause the officer to refer the case back to the gate-keeping process.

Conferences are lengthier than cautions and typically involve many more individuals, including the victim. If a conference does not result in an agreement concerning undertakings for the juvenile then the matter is returned to the gate-keeping process and may be referred to court. Likewise, if the youth fails to complete the undertakings the matter can also be sent to court.

Generally, serious offences are ineligible for diversion and can only be dealt with by the court system, although in some situations in New Zealand serious offences can go directly to conferences. As noted, the courts also hear cases involving offences of intermediate seriousness where the youth concerned (a) has denied committing the offence, (b) has not been offered a diversionary forum after the gate-keeping process, (c) was involved in a failed diversionary forum, or (d) did not complete the undertakings agreed upon in a conference. There are a number of intricate differences between the jurisdictions regarding the courts' role. However, there are two main situations in which the courts can refer cases to conferences. First, the court can send juveniles who have admitted guilt directly to a conference as an alternative to hearing the matter. This effectively allows the courts to check the gate-keeping process. Second, the courts can use conferences as a sentencing option, alone or in conjunction with other forms of disposition.

As illustrated in Table 2.1 below, adapted from Strang (2001), Power (2000), and Morris and Maxwell (1993), significant differences exist between the conferencing systems in Australia and New Zealand.

Table 2.1 Conferencing systems in Australia and New Zealand

JURISDICTION AND LEGISLATION	OFFENCES INELIGIBLE FOR DIVERSION	PLEAS ELIGIBLE FOR DIVERSION	GATE-KEEPING	FORMAL CAUTIONS	CONFERENCES
ACT (Canberra)	Most serious violent offences, sexual offences, domestic violence, certain traffic and licensing laws	Youth must admit guilt and consent to diversion	Police (<i>Children's Services Act 1986</i> (ACT))	—	Police facilitator
- No legislation					
NSW - <i>Young Offenders Act 1997</i> (NSW)	Indictable offences which cannot be dealt with summarily; sexual offences, offences causing death, certain drug offences, offences relating to apprehended violence orders, most traffic offences	Youth must admit guilt and consent to diversion	Police. Disputes between police and conference coordinators referred to DPP.	Police can require youth to give an apology	Independent facilitator Veto option for offender and victim
NT - <i>Juvenile Justice Act 1997</i> (NT); <i>Police Administration Act 2000</i> (NT)	Most serious violent offences, and sexual offences	Need not admit guilt	Police	Police can administer a basic caution	Police facilitator
NZ - <i>Children, Young Persons, and Their Families Act 1989</i> (NZ)	Murder, manslaughter and traffic offences not punishable by imprisonment	Need not admit guilt, only decline to deny charges	Mandatory referral to conference if no police warning delivered	No legislative ground: police practice to give warnings, sometimes with an informal sanction	Independent facilitator

Table 2.1 Conferencing systems in Australia and New Zealand

JURISDICTION AND LEGISLATION	INELIGIBLE OFFENCES FOR DIVERSION	PLEAS ELIGIBLE FOR DIVERSION	GATE-KEEPING	FORMAL CAUTIONS	CONFERENCES
QLD - <i>Juvenile Justice Act</i> 1992 (<i>Qld</i>)	Police discretion	Youth must admit to offence Both the youth and the victim must consent to the conference	Police	Police can suggest youth apologise to the victim	Two independent facilitators
SA - <i>Young Offenders</i> <i>Act 1993 (SA)</i>	Police discretion regarding meaning of 'minor' criminal offence; has included sexual assaults and robberies	Youth must admit guilt and consent to diversion	Police No court referrals	Police power to impose substantial undertakings. Failure to complete undertakings can lead to court.	Independent facilitator Veto option for offender and police officer.
TAS - <i>Youth Justice Act</i> 1997 (<i>Tas</i>)	10-13 years: murder, manslaughter, attempted murder + 14-16 years: serious sexual offences and robbery + 17 years: traffic offences	Youth must admit guilt and consent to diversion	Police	Police power to impose substantial undertakings. Victims can be present. Failure to complete undertakings does not lead to court.	Independent facilitator Many formal cautions run as conferences by police facilitators Veto option for offender, victim, and police officer.
VIC (Melbourne) - No legislation	Not used for minor matters.	Youth must admit guilt.	Court referral; only in place of Supervisory Order	—	Independent facilitator
WA - <i>Young Offenders</i> <i>Act 1994 (WA)</i>	Most serious violent and sexual offences; some traffic offences	Youth must admit guilt	Police & Prosecutor	Police can administer a basic caution	Independent facilitator within a 'team'

2.3.1 Offences ineligible for diversion

Different approaches have been adopted regarding which offences are ineligible for diversion. In South Australia and Queensland the police have discretion as to which offences they may decide to divert. The other jurisdictions have chosen to specify which offences are sufficiently serious to automatically require court proceedings, regardless of whether the young person admits to the offence. Several jurisdictions have excluded sexual offences altogether and most of the serious violent offences (Western Australia, ACT, Northern Territory, and NSW) whilst New Zealand's system only excludes murder and manslaughter. Tasmania has three categories of offences that are ineligible for diversion, corresponding to three age brackets. Offenders aged between 10 and 13 years cannot be diverted away from court for murder, manslaughter and attempted murder. In addition to these crimes, offenders aged 14 to 16 years cannot be diverted for serious sexual offences, aggravated armed robbery, armed robbery, robbery, or preparing to commit a property offence armed with a dangerous weapon. The offences ineligible for diversion for 17 year olds include all the offences listed above as well as traffic offences.

2.3.2 Plea required for diversion and consent

With the exception of New Zealand and the Northern Territory, young people must admit guilt before they can be diverted away from court. In most cases it is also necessary that the young person consent to attend the caution or conference. However, consent is not required in Western Australia or Victoria. Queensland is unique in that, where a victim is involved, the victim must give their consent before a conference can be held.

2.3.3 Gate-keeping body

The process of channelling cases to different tiers of the youth justice system is called 'gate-keeping'. The gate-keeping process is obviously restricted to those cases which are eligible for diversion. In all jurisdictions the discretion to informally caution young offenders rests with the police. The police also have the sole power to divert juveniles to a formal caution, although neither Victoria nor the ACT have formal cautioning systems.

The gate-keeping process for conferencing is more complex. The continuing pilot program in Victoria has a very specific gate-keeping process – conferences are accessible only for those youths who are expecting to appear in court and would probably be given a supervisory order (Rebecca Grace, pers. comm., 26/06/2003; Strang, 2001; see also Ban, 1996).¹³ South Australia, Tasmania, Queensland, the ACT, and the Northern Territory have allocated the discretion to divert youths to a conference to the police. Of these five police gate-keeping systems, all except South Australia, have provided for the possibility for the courts to refer matters to juvenile conferences. That is, the courts have the power to refuse to hear a matter and refer it automatically to a juvenile conference. Alternatively, post conviction the courts can refer juveniles to conferences. In Western Australia and NSW the police share the gate-keeping role with other agencies including the courts. The system in Western Australia involves a mixed gate-keeping role between the police and public prosecutor. Conference facilitators in NSW are involved in gate-keeping. Where they disagree with the police, cases can be referred to the public prosecutor for adjudication. New Zealand differs markedly from all Australian jurisdictions in its gate-keeping process. Although the police still have the discretion whether to deal with a matter informally or through a formal caution, all other matters not dealt with in either of these ways must be referred to a conference. This ‘mandatory’ system is arguably the most significant feature of the New Zealand diversionary system (Power, 2000: 218).

2.3.4 Formal cautions

Formal cautions exist in all jurisdictions except for Victoria and the ACT. In most jurisdictions formal cautions are relatively simple processes involving a police officer, the young offender and an adult. In Queensland the police are able to ‘suggest’ that the offender apologise to the victim (*Juvenile Justice Act 1992* (Qld), s. 16(2)), whilst in NSW the police can ‘require’ an apology (*Young Offenders Act 1997* (NSW), s. 29). These very minor police powers are a stark contrast to formal cautioning in South Australia and Tasmania. In both these states the police can ask the young offender to agree to ‘substantial undertakings. Refusal by the juvenile may cause the matter to be referred to court. South Australian formal cautions can result in up to 75 hours community service, compensation for the victim, or ‘anything else appropriate in the circumstances’ (*Young*

¹³ Grace is the Senior Project Officer in the Juvenile Justice Section of the Department of Human Services, Victoria.

Offenders Act 1993 (SA), s. 8(1)(a) – (c)). Similar undertakings can be imposed in Tasmanian formal cautions, although the community service has an upper limit of 35 hours (*Youth Justice Act 1997* (Tas), s. 10(2)(c)).

In one sense the South Australian model of formal cautioning provides the police with more power than does the model introduced in Tasmania. In South Australia if a youth agrees to undertakings in a formal caution but fails to complete those undertakings the police can then refer the matter to court (*Young Offenders Act 1993* (SA), s. 8(8)).

However, the Tasmanian model of formal cautioning also has a provision unique amongst Australian jurisdictions. The *Youth Justice Act 1997* (Tas) allows for the presence of *victims* at formal cautions (s. 9(3)(a)). Tasmanian police have interpreted this section to allow for discussion between the victim and the young offender and, consequently, for the facilitation of formal cautions as conferences. Effectively Tasmanian police may choose to conduct formal cautions for some cases and conferences for other cases.

2.3.5 Conferences

Tasmania has the most unusual system of conferencing due to the police practice of conducting some formal cautions as conferences in addition to the Department of Health and Human Services (DHHS) conferences. All other jurisdictions have adopted either police conferences (ACT and NT) or independently run conferences (NSW, NZ, Qld, SA, Vic, and WA). Queensland has developed an interesting practice in using two facilitators for each conference. Similarly, Western Australian facilitators operate as a member of ‘teams’ that are assigned conferences to coordinate.¹⁴

In a sense all young offenders who attend a conference have a veto option over the undertakings purely because their agreement and positive orientation towards the conference is essential. However, some jurisdictions specify which conference participants must agree upon undertakings before a conference can be concluded successfully. Queensland is the only jurisdiction which stipulates a consensus amongst

¹⁴ It is beyond the bounds of this thesis to examine in further detail the employment arrangements of the independent facilitators in the jurisdictions. However it is worth noting that an important consideration in some jurisdictions has been whether facilitators should be employed or whether their involvement in restorative justice should be on a voluntary, unpaid basis (Crawford & Newburn, 2003). Others have considered whether it is inappropriate to employ social workers as facilitators. Their main concern is whether social workers can divorce their professional welfare training from their restorative practices (see for example Hoyle et al., 2002). A third issue is the nature of employment for independent facilitators. Should they be employed on a full-time basis or as contractors?

all conference participants. In NSW only the offender and the victim must agree, whilst South Australia requires the mutual agreement of the youth and the police officer. The DHHS conferences in Tasmania need the agreement of the youth, the victim, and the police officer. Police officers administering formal cautions in Tasmania can 'require the youth to enter into ... undertakings' (s. 10 (2), *Youth Justice Act 1997 (Tas)*). However, when the Tasmanian police conduct conferences they tend to seek at least the agreement of the victim, the young person, and the police officer 'facilitator'.

2.4 DIVERSION AND POLICE GATE-KEEPING

The *Youth Justice Act 1997 (Tas)* (s. 7) states that one of the primary objectives of the new juvenile justice system in Tasmania is to divert young offenders away from court. Achieving reductions in the number of youth court appearances is therefore the first test of the new system. As with many other jurisdictions, in Tasmania it is the police who predominantly decide how each case is to be dealt with, be it an informal caution, formal caution, police conference, DHHS conference, or court.

Many commentators have warned against allowing the police to be the gate-keepers to juvenile justice systems. Their main concern is that police biases against certain groups will lead them to treat juveniles from those groups more harshly. An example of harsh treatment would include a formal caution and a community service order for a youth who might otherwise have been informally cautioned. These juveniles will be disadvantaged since increased contact with the police seems to be positively correlated with criminal behaviour in juveniles (Blagg & Wilkie, 1997; Sandor, 1993). There is some evidence that police treat some categories of juveniles differently from others. For example, disproportionately high frequencies of indigenous youths are sent to court in NSW and South Australia (Hennessey, 1999; Wundersitz, 1996a). Similarly, being of Maori descent was found to be a predictive factor of arrest for juveniles in New Zealand (Maxwell & Morris, 1993). Others have suggested that the police are biased against male offenders (Powers, 2000; cf Hennessey, 1999). Concerns have also been raised about police biases against (a) low socio-economic groups, (b) youths from unstable families, (c) youths whose parents have a negative attitude towards the police, and (d) youths from families with criminal histories (Lee, 1995; Maxwell & Morris, 1993). Unfortunately the police gate-keeping practices concerning race, gender, socio-economic background,

offending history and so on could not be analysed in my own Tasmanian study, partly because of the inflexibility of the police data base from which statistics were drawn.

However, I was able to produce robust statistics on the rates of juvenile diversion in Tasmania. The results indicate that the police have been diverting youths away from court to their own formal cautions and conferences as well as to DHHS conferences. These results are analysed in detail in chapter four. It can be mentioned here, though, that the Tasmanian police do not seem to be reluctant to use the DHHS conferences. Police reluctance to refer youths to conferences has crippled some non-police juvenile conferencing schemes in other jurisdictions in the past. Indeed, if the police 'shut the gate to restorative justice, it is nigh impossible to push it open against their resistance' (Braithwaite, 1999: 342). For instance, eighteen months after the establishment of the diversionary scheme in NSW in 1997, over 70 per cent of youths were still being processed through the court system (Power, 2000). Although just under 20 per cent of young offenders were diverted through the formal cautioning system, as few as three per cent were referred to a conference.

Some have argued that the police are biased against conferencing because they perceive it to be a 'soft option' which would not deliver the valuable 'short, sharp shock' received from a court appearance or detention (Sarre, 1999: 246). In some instances it may simply be that the police are disinterested in new diversionary systems, or are simply 'unaware' of them (Power, 2000: 285). However, to a degree the courts can check heavy biases in police gate-keeping because in most systems the courts can refer cases onto a conferencing scheme – which can be a clear sign to the police that their gate-keeping processes are inappropriate. For this reason, Power (2000) partly blamed the low referral rates to conferences in NSW upon a lack of support from the bench. That is, he believes the courts could have forced the police to refer more cases to conferences. It is interesting to note that the courts have also been directly responsible for the failure of restorative justice initiatives. For instance, the courts in Queensland scuttled a well founded victim-offender program simply by failing to refer many cases to it (Condliffe, 1998).

The South Australian conferencing scheme appears to have had support from the courts, though there have been variations between magistrates (Wundersitz, 1996a). Perhaps

this is one of the reasons for the success of the scheme in terms of (a) the high levels of diversion and (b) the numbers of cases referred to conferences by the police. Police in South Australia send almost one third of juvenile offenders to court. Just over 33 per cent are dealt with by way of an informal caution, 22 per cent by formal cautions, and the remaining 10 per cent or so are sent to conferences (Power, 2000).

Despite only being a pilot program in one city it is worth noting the success of the Wagga Wagga scheme as well. In Wagga Wagga in 1990, 72 per cent of juvenile offenders were sent to court and by 1992 this figure had dropped, remarkably, to less than 10 per cent. By 1991 over 40 per cent of the young people who were diverted from court were sent to a police conference (Moore & Forsythe, 1995; Power, 2000).

Advocates for the Wagga Wagga scheme suggested that one of the main reasons for its success was that on a weekly basis a panel of sergeants reviewed every juvenile case that was eligible for a conference (Moore & McDonald, 1995). Evidently the sergeants saw the value of conferencing juvenile offenders. However, unlike the other schemes considered thus far, the police in Wagga Wagga were diverting youths to their own conferencing program. Also it is arguably easier to monitor and maintain good gate-keeping practices in one regional town, such as Wagga Wagga, than across an entire state, or indeed a country in the case of New Zealand. Different gate-keeping practices were observed in different regions of New Zealand (Maxwell & Morris, 1993). Additionally, the Wagga Wagga scheme was by all accounts operated by particularly dedicated and enthusiastic police officers (Powers, 2000).

The Western Australian gate-keeping system, which involves both the police and the public prosecutor, appears to be functioning well. Of the youths dealt with formally by the police, that is, excluding informal cautions, 65% are formally cautioned, 11.2% are sent to conferences, and just over 23% are referred to court (Ferrante et al., 2000).

None of the police gate-keeping schemes have matched the performance of the mandatory gate-keeping process of the New Zealand system. Maxwell and Morris' (1993) study indicated that across the country only 10.3 per cent of juveniles were sent to court: 31 per cent were referred to a conference and the remainder were dealt with by warning or some other form of diversion. Importantly, almost all of the youths who were sent to court intended to dispute the charges. This means that the courts were

predominantly performing their adjudicatory role – determining guilt – instead of dealing with a large number of guilty pleas. Power (2000) concludes that these figures indicate that New Zealand’s mandatory gate-keeping process is superior to police gate-keeping both in (a) diverting youths away from court and (b) diverting youths to non-police run conferences. His analysis of the experience in other jurisdictions is that the police have been reluctant to divest themselves of their discretionary powers and want to retain the ‘ultimate choice’ as to whether a young offender attends a conference or appears in court (Power, 2000: 296). Unfortunately, in some instances the police have placed little faith in the viability of conferencing as an alternative to court. Many feel that this is partly due to an ingrained view of a court appearance as a successful outcome (Sarre, 1999; Wundersitz, 1996b; Power, 2000).

2.5 NET-WIDENING

Clearly, diversionary schemes can be negatively affected when gate-keepers do not refer enough cases to them. However, many commentators are equally concerned about gate-keepers referring *too many* cases to diversionary processes. This is considered to be particularly worrying when minor cases, which previously would not have been dealt with, or would have been dealt with by way of an informal procedure, are drawn into a scheme (Lee, 1995; Cohen, 1985). Police warnings or cautions, conferences, and court appearances are forms of state intervention. By increasing the number of young people with whom the state has official contact, diversion widens the nets of social control (Schelkens, 1998). Anxieties about what is known as net-widening predate conferencing and restorative justice (Ditchfield, 1976). The term net-widening is also used in reference to an increase in the duration or severity of state intervention – ‘wider, stronger and different nets’ (Austin & Krisberg, 1981: 165; Blagg & Wilkie, 1995).¹⁵ Cohen (1985) suggested that one way in which the severity of the state intervention might increase would be through harsher court penalties. He was concerned that with the introduction of diversionary schemes the courts would view those juveniles who appeared before them negatively. That is, the courts might think that young offenders who have been sent straight to court must be deserving of harsh treatment. This suggestion becomes important in chapter four.

¹⁵ Two examples are an increase in penalties and an increase in the time taken to process an offender.

2.5.1 *Evidence of net-widening in the Australian and New Zealand conferencing systems*

Evidence of net-widening has been reported in a variety of diversionary systems internationally (Seymour, 1988; Lee, 1995; cf Bottoms et al., 1990; McCold & Wachtel, 1998). Ferrante et al. (2000) did not specifically attempt to study the occurrence of net-widening in Western Australia. Neither did they provide the annual rates of juvenile conferences (which began in Western Australia in 1995). However, they reported the total annual number of juvenile court convictions as well as the total annual number of juveniles formally cautioned from 1992 to 2000 (Ferrante et al., 2000: 52, 111). When the number of convictions and cautions for each year are added together it strongly suggests that net-widening is occurring in Western Australia. In 1992 the combined figure of convictions and formal cautions was 8,335. By 2000 the total number of juveniles convicted or formally cautioned had risen dramatically to 14,324 juveniles. This substantial rise seems largely due to an increase in the number of formal cautions given by the police. In 1992 there were 3,804 formal cautions, whilst in 2000 there were 11,267. The conviction rate for this 1992 – 2000 period dropped from 4,531 to 3,057. More positive findings came from the New Zealand system, which began in 1989. In the three years just after the introduction of conferencing, 1991 to 1993, the total number of youth offences cleared by the police, family group conferences, and court fluctuated very little (Maxwell & Morris, 1996). In other words from 1991 to 1993 there was no overall increase in the number of young people having contact with the criminal justice system. Conferencing began in South Australia in 1994. Wundersitz (1996a) compared the total number of formal interventions (formal caution, community conference, and court) in the period *prior* to the new system (1992-1993) with the period after the implementation of the new system (1994-1995). She found that there was a reduction from 11,638 formal interventions in the 1992-1993 period, to 9,994 in the 1994-1995 period. However, Wundersitz (1996a) warned that without data on the number of informal cautions no firm conclusions could be drawn. That is, if the frequency of informal cautions were calculated there might have been evidence of net-widening in the 1994 – 1995 period. Power (2000) analysed the frequencies of formal interventions in South Australia in the years 1994 to 1998. His data suggested that there had been a reduction in the number of formal interventions from almost 13,000 cases in 1994 to under 9,000 in 1998. It should be noted that Power (2000) drew on three different sources of

statistics from three different bodies in South Australia.¹⁶ Without detailed knowledge of the data collection techniques employed by the three agencies it is unclear how well the figures can be compared. Interestingly, there was no evidence of net-widening during the Wagga Wagga pilot scheme – even though the police had the power to refer cases to their own conferences. In actual fact, whilst the scheme operated, fewer youths were dealt with by way of court or conferences combined (Moore & Forsythe, 1995). One of the main contributions of this thesis is to provide longitudinal data on net-widening in Tasmania, similar to the statistics presented by Ferrante et al. (2000). However, unlike any of the studies referred to above, the present research, analyses nine years of data *prior* to the introduction of the new conferencing system (1991-1999) and compares this with data from the first two years of the new system (2000-2001). Trends from the two periods are tested for statistical difference using regression analyses. This provides some of the clearest evidence to date on net-widening in a conferencing scheme.

2.5.2 *Effects of net-widening*

There is dissension in the literature as to whether net-widening is necessarily a harmful phenomenon, at least insofar as increasing numbers in diversion schemes is concerned.

Some commentators are wary of any contact between the state and young people. The well founded positive correlations between traditional criminal justice processing and juvenile recidivism¹⁷ seem enough to imply that diversion processes will also label or stigmatise young people. Polk (1994: 130), for instance, emphasises the ‘ever present coercive threat of the court’ in conferencing – and even the use of the word ‘justice’ in the title of the New Zealand conference facilitators – to argue that conferences are not a true form of diversion, only an alternative form of ‘justice processing’. Similarly, Schwartz and Preiser (1992) emphatically warn that entangling juveniles in the justice system presents serious risks to their development which outweigh the supposed positive aspects of diversion. However, Warner (1997) points out that there is no evidence that diversion programs cause labelling and stigmatisation. Indeed, whereas recidivism is positively correlated with arrest and court appearances (Gold & Williams, 1970),

¹⁶ The sources Power (2000: 299-301) analysed included data from the (a) Strategic Development Branch, South Australian Police, (b) Juvenile Justice Advisory Committee, Attorney-General's Department, and (c) Office of Crime and Statistics, Attorney-General's Department.

¹⁷ See for example Farrington (1977); Gold & Williams (1970).

conferencing seem to reduce recidivism (Latimer et al., 2001; see also Ahmed et al., 2001: 5-6).

Braithwaite (1999) suggests that net-widening in some circumstances may benefit young offenders and others. Net-widening may bring hitherto unaddressed social problems, such as domestic violence, abuse, and school bullying, to the community's attention (Braithwaite, 1994). Braithwaite (1999) also believes that, in keeping with his normative republican theory of criminal justice (see Braithwaite & Pettit, 1990), conferences can become a state supported framework for the expansion of individual socio-political freedom and the right sort of grassroots community control. Net-widening which facilitates this expansion is of itself 'a good thing' (Braithwaite, 1999: 91). This perspective is diametrically opposite to that of Polk (1994: 135) who argues that historically the 'justice system has the capacity to transform over time even the best designed diversion program' (citing Lemert (1981) and Austin & Krisberg (1981)). What may begin as community co-option of state power can easily reverse (Polk, 1994).

2.5.3 Causes of net-widening

Numerous explanations have been forwarded to explain why net-widening occurs. Many suspect that diversion encourages interventionist welfare considerations in policing gate keeping (Polk, 1994). That is, believing a form of diversion – such as a conference – is truly beneficial for young offenders, the police choose to deal with a greater number of minor offenders this way. On the other hand perhaps net-widening can be driven by police disinterest in a diversionary scheme, which leads them to divert mostly those cases which they are not interested in processing themselves and which previously they might have disregarded (Braithwaite, 1999). Simultaneously, the agencies conducting the scheme may actively seek more referrals from the police (Braithwaite, 1999), which in turn may attract more funding and expansion of the diversionary scheme (Condliffe, 1998). Condliffe (1998) also points to changes in the legal processing of young people that occur with the introduction of diversionary schemes. For instance, generally youths are required to admit guilt before they are eligible for a conference. Some commentators suggest that there naturally exists some pressure on youths to plead guilty to finalise the legal process quickly (Wundersitz et al., 1991). Warner (1994) detailed a whole raft of legal issues that – even without any deliberate abuse of police power – might conspire to

(a) draw more youths into the justice system, and (b) yield more convictions.

2.6 POLICE CONFERENCES

It was noted above that in many jurisdictions a police officer attends each conference. In some cases the police officer has a veto right over the conference outcomes. Generally there has been little criticism of police involvement as conference participants (Dignan, 1999), although occasionally excessively punitive attitudes have been observed (Bargen, 1999). Daly (1999) found that police officers attending juvenile conferences in South Australia had more positive opinions of the main participants than did the independent facilitators. Notably, the officers perceived less defiance in the behaviour of the youths. The police officers and the facilitators also appeared to work together well, without much friction. There is some evidence that police officers can play a positive role in conferences by using their professional experience to steer group discussion away from disproportionately harsh outcomes for young offenders (Young & Hoyle, 2003). Overall, it is widely accepted that police support is vital for conferencing programs (Bargen, 1999; Sarre, 1999; Wundersitz, 1996a).

On the other hand, the issue of police officers actually facilitating conferences has met stiff opposition. The main concern is that by facilitating conferences police powers are increased to an unacceptable level. In addition to the power to investigate crimes and powers of arrest, some argue that police-run conferences also confer quasi-judicial powers to the police to judge and punish offenders (White, 1994). It is questionable whether sufficient legal safeguards can be put in place to prevent abuses of these powers (Warner, 1994). Furthermore, quasi-judicial powers for police officers do not seem to comply with Article 40(2)(b)(iii) of the *United Nations Convention on the Rights of the Child*, which states that every accused child is to be guaranteed a hearing by an 'independent and impartial authority'. Indeed, a number of writers have expressed suspicion about police motives for wanting to facilitate conferences. Sandor (1993) plainly sees the police force as a self-serving bureaucracy that always seeks to expand its powers. Others wonder if there is a 'hidden agenda' behind the apparent willingness on the part of the police to 'embrace' restorative justice, namely a longstanding frustration with the courts to give sufficiently punitive responses to juveniles (Dignan, 1999: 56). Acting as conference organisers and facilitators allows police officers to exert influence over the

sanctions 'agreed' upon. The police have also been portrayed as the government body least capable of empowering in a restorative way indigenous people and young people, with whom they have a history of conflict (White, 1994; Blagg, 1997; Cunneen, 1997).

2.6.1 Police conferencing in Australia

It was explained above that police conferencing in Australia took the form of the Wagga model, its perspective being shaped by reintegrative shaming and affect theory. Advocates of the Wagga model reported that police officers facilitated conferences very well and to the satisfaction of the participants (Moore, & McDonald, 1995). Police facilitators were portrayed as objective umpires. Their professional position was not viewed as a barrier to objectivity, but rather as something that lent gravity to the conference proceedings. Furthermore, police stations were described as a useful 'neutral ground' upon which to conduct conferences (Moore, 1993: 211). Reactions against these views claimed that (a) police relations with young people were marred by a history of violence and abuses of power, (b) police officers do not have sufficient mediation skills to facilitate in a restorative manner, and (c) police stations could never be viewed as neutral places (Sandor, 1993).

Police conferencing practices in the ACT were closely observed during the Reintegrative Shaming Experiment. Many positive events were witnessed during the police conferences and the results indicated that the processes had positive effects on violent crime in particular. However, even those who had supported the early Wagga Wagga scheme were not impressed with the standards of the police facilitators in the ACT. Braithwaite commented that he saw 'disturbing' amounts of stigmatisation and concluded that the Canberra program 'is hardly a best-practice one' (Braithwaite, J. & Braithwaite, V., 2001: 58). Braithwaite admitted that the stigmatising practices were partly due to inadequate understanding of reintegrative shaming theory on behalf of the police facilitators – who tended to latch onto the shame word (Braithwaite, J. & Braithwaite, V., 2001). It seems, though, that conditions were not altogether ideal for police conferencing in the ACT. The Wagga Wagga scheme involved only a few experienced police officers. In contrast, over 100 police facilitators were included in the ACT program, which 'inevitably resulted in the training of many officers who had neither

the aptitude nor interest' in conferencing (Power, 2000: 206).¹⁸ Many police facilitators in Tasmania would also fall into this category of having been obliged or told to facilitate conferences. The consequences of these policies are discussed in chapter five.

2.6.2 Police conferencing in the UK

The story of police conferencing outside Australia has been quite different. During the 1990s in the UK police cautioning practices, which at this stage had not been influenced by restorative justice, came under increasing criticism (Crawford & Newburn, 2003). Official recognition was given to the fact that cautions had the potential to damage juvenile development if conducted the wrong way. Evidence arose that the police were abusing the cautioning process, particularly in regards to processing youths without clear and reliable confessions (Evans, 1996). Various questionable practices were observed including moral lecturing, intimidation, case construction around police versions of events, intimating imprisonment as a likely outcome for future offending and so on (Young & Goold, 1999; Lee, 1995). Cautions were described as 'degradation ceremonies' that reinforced the role of the police as 'moral condemners' (Lee, 1995: 325).

The Thames Valley police employed the Wagga model to revitalise their cautioning techniques. The researchers who evaluated this initiative reported that there has been an unmistakable 'widespread' and 'genuine' improvement in the cautioning practices (Hoyle et al., 2002: 66). The new practices are called restorative cautions. They run on average for 45 minutes (instead of 15 minutes that the average old style caution would take). The facilitators use a 'script' and invite the offender and their supporters to discuss the impact of the crime. In fact, these restorative cautions could arguably be mistaken for police conferences. In addition to restorative cautions, for more serious offences involving a victim the Thames Valley police now run conferences (Hoyle et al., 2002). The unfolding of these events seems to have given police conferencing more political acceptability in the UK than it ever won in Australia. No doubt police diversionary practices in the UK are less controversial because they cannot result in undertakings for the young offender to complete, unlike formal cautions in South Australia and 'formal cautions' (police conferences) in Tasmania. Nevertheless, some writers seem to adopt a

¹⁸ Additionally, the facilitators may well have been influenced by the negative comments one very senior officer made publicly about conferencing.

resigned pragmatism towards police conferencing in the UK. That is, (a) conferences are viewed as only a more complex version of a caution, (b) stopping police conferencing would be too difficult now, (c) in any case, what exists now is better than what existed before, and (d) police officers are as good as any other professional group to facilitate conferences (Young, 2001).

How did the police facilitators perform in the Thames Valley evaluation? The answer is well enough for the researchers to conclude that police conferencing should continue. First, it was evident that many officers were committed to learning how to facilitate well. Many conferences were run fairly, the youth gained some insight into the impact of their offence, and generally satisfaction amongst the participants was quite high (Hoyle et al., 2002). It was noted above that scripts are a common feature of the Wagga model that provide the facilitator with a framework for how to run each conference. The researchers argued that the officers' practices were best when they did not deviate from the conference script, regardless of their experience. Amongst other things, following the script made the officers vastly more neutral and unimposing, empowered all of the main participants, and 'maximised restorative justice' (Hoyle et al., 2002: 67). However, Hoyle et al. (2002) criticised the police for the way in which they prepared the conferences. One third of participants were not briefed about the conference at all – meaning that consent was in question. Only 13% of participants were given face-to-face briefings by the facilitator. Finally, two thirds of young offenders felt that they had no meaningful choice in whether to attend. Inadequate conference preparation (a) inhibited the participants' ability to prepare what they wanted to say, to choose a supporter, and to be empowered in a restorative way, (b) denied the participants procedural justice, and (c) jeopardised participants' respect for the police and for the justice system. Worrying also were that some youths were still processed without clear admissions of guilt. Occasionally, officers dominated the proceedings and prevented discussion between the participants.

2.6.3 Police conferences in North America

Since 1995, well over 2000 North American professionals, including police officers, have been trained to facilitate conferences using the Wagga model (McCold & Wachtel, 1998).¹⁹ An 18-month trial of police conferencing in Pennsylvania produced mixed results. Similar to the experience in the ACT, it seemed that some of the 20 officers had misinterpreted reintegrative shaming and actually adopted stigmatising facilitation techniques. Even a second, unscheduled training session concerning these practices failed to eradicate them (McCold & Wachtel, 1998). Advocates of police conferencing were hoping that significant changes would occur in wider police attitudes and in the police sub-culture. No evidence supported this hypothesis. However, the attitudes of the police facilitators changed. They became more community oriented and less oriented towards pure crime control. Offenders and victims were seemingly comfortable with police facilitators.

CONCLUSION

The growth of juvenile conferencing in Australia over the last decade has been very rapid. The conferencing system established in Tasmania has many of the hallmarks of other jurisdictions. One significant difference is that it includes both police-run conferences and conferences conducted by independent facilitators. The next chapter will explain the evolution of the Tasmanian system in more detail. The heavy involvement of the police in all aspects of the Tasmanian system make it valuable to study. Will it succeed in diverting youths away from court? Or, with enthusiasm for diversionary procedures, will the police actually increase the number of youths that have formal contact with the justice system? Finally, how will the practices of the police conferences and the DHHS conferences compare? These issues are addressed in chapters four, five, and six with findings that are significant for conferencing systems nationally and internationally.

¹⁹ On the use of the New Zealand model in North America see Immarigeon (1996).

CHAPTER THREE

THE TASMANIAN JUVENILE JUSTICE SYSTEM

This third chapter is the final descriptive chapter. Chapter one described the broad international context of restorative justice, which has claimed juvenile conferencing as its own. Chapter two discussed the birth of conferencing in Australia and New Zealand, slightly ahead of modern restorative theory. The essential characteristics of the diversionary systems in these jurisdictions were outlined as well as some controversial issues surrounding diversion, including police-run conferencing. This chapter explains the legislative machinery of the Tasmanian juvenile justice system and how it works in practice. A rounded understanding of Tasmania's legislation must consider its evolution. Many of the forces which shaped the *Youth Justice Act (1997)* (Tas) predated both restorative justice and the establishment of conferencing in New Zealand. In particular, the 1970s and 1980s were marked by a national debate between two paradigms which are often referred to as the welfare model and the justice model. The first part of the chapter will describe these models and outline other influential concepts. In 3.2 the discussion considers how these influences operated in Tasmania in the late 1980s. Key policy papers are described (Briscoe & Warner, 1986; Department of Community Services, 1991) as well as features of practice in the welfare and policing sectors. Importantly, a number of internal documents indicate that police practice changed quite significantly before the passing of the *Youth Justice Act (1997)* (Tas). The third part of the chapter (3.3) highlights the reforms introduced by the Act and analyses its policy orientation. Seemingly the justice model and the goal of diverting youths away from court have moulded the legislation to a great extent. The final part of the chapter is devoted to describing how the legislative provisions for formal cautions and juvenile conferences are applied in practice (3.4). As indicated in chapter two, many of the 'formal cautions' conducted by the police are in fact Wagga style conferences.

JUVENILE JUSTICE POLICIES PREDATING CONFERENCING AND RESTORATIVE JUSTICE

It is important to view the formation of Tasmania's new youth justice system in the 1990s in both a national and historical context. Many writers draw attention to policy tensions that had existed in the juvenile justice arena since the 1970s – in particular tensions between two models or approaches. The models are often referred to as the welfare model and the justice model (Freiberg et al., 1988).

3.1.1 *Welfare model*

The beginnings of the welfare model can be traced to the turn of the 20th century. The American 'child saving movement' influenced the establishment of the first separate court proceedings for juvenile offenders in Australia (Cunneen & White, 2002).²⁰ Parliamentary debates and other historical records of the time indicate a growing conviction that (a) children were at risk of stigmatisation from proceeding through the adult courts and prisons, and (b) discovering and treating the causes of child misbehaviour could prevent youths from becoming adult offenders (Seymour, 1988).²¹ Importantly the new courts dealt with neglected and uncontrollable children as well as young offenders. These early developments were to remain defining features of the welfare model.

From the 1950s the welfare model attracted a new 'scientific legitimacy' with the rise of the social sciences (Seymour, 1988: 111). Positivist schools of criminology were confident that the scientific method could determine biological, psychological, and social-psychological factors operating *upon* juveniles that attracted them to deviant behaviour (Pratt, 1993). Deviant behaviour – crime being one such behaviour – was viewed as an indicator of abnormal juvenile maturation and a predictor of adult criminality (O'Connor, 1997). This perspective encouraged a blurred distinction between

²⁰ Tasmania was slightly delayed in this respect. It was not until 1918 with The Children's' Charter that separate courts with exclusive jurisdiction over juveniles appeared. A recurring dynamic in Australian juvenile justice was the 'uncritical adoption' of policies originating in America (Seymour, 1988: 165). Often critiques of American systems were voiced in Australia without regard to important differences between the jurisdictions.

²¹ In practice this meant that probation officers were given the task of uncovering the environmental background of children and providing reports to the courts.

youths who were troubled and youths who had committed offences.²² It also engendered a view that the state had a responsibility to reduce deviant behaviour. This could be successfully achieved with therapies and forms of rehabilitation (Naffine, 1993). Much discretionary power was given to government welfare departments through the courts' use of orders that were indeterminate in content and length. In Tasmania's case committal orders were indeterminate and allowed the Director of Community Services to determine a youth's custody.²³ Committal orders were applicable as a response to criminal behaviour or for more general welfare considerations. In many instances the orders were continued until the department considered that the youth had responded to the therapy or welfare strategy (Warner, 1997).

A thorough re-assessment of the youth justice system and its philosophical foundations began in the 1970s, again with the influence of developments in America where welfare strategies had been employed far more extensively than in Australia (Seymour, 1993; Cunneen & White, 2002). The law and order lobby and civil libertarians alike critiqued the welfare model for failing to provide juveniles with the same procedural safeguards in the legal system as those granted to adults. Amongst other injustices, commentators pointed to (a) the court's intervention in non-legal matters, (b) interventions that were disproportionately severe for the offence committed, (c) the lack of public scrutiny of departmental decision making, and (d) the expansion of the nets of social control (O'Connor, 1997). Additionally the welfare model's positivist explanation of the causes of crime became considered in some academic quarters as overly simplistic. The efficacy of treatments and rehabilitative programs were brought into question, contributing to a 'new mood of scepticism' in the juvenile sector (Seymour, 1988: 163). This struck at one of the fundamental concepts of the welfare model. That is, that the state could intervene in a positive way in the life of a young person. It appears that to some extent this scepticism was triggered by exaggerated negative analyses of empirical research on rehabilitative programs (Sarre (2001) in reference to Martinson (1974)). Sarre (2001) suggests that the indiscriminate belief that 'nothing works' is still widely held amongst Australian policy makers.

²² Tasmania's *Child Welfare Act 1960* (Tas) stipulated that 'each child suspected of having committed, charged with or found guilty of an offence shall be treated, not as a criminal but as a child who is, or may have been, misguided and misdirected' (s. 4). Numerous examples are recorded by Seymour (1988) of the types of behaviours which attracted state intervention. One such example was promiscuity amongst young females.

²³ *Child Welfare Act 1960* (Tas), s. 23(1A).

3.1.2 *Justice model*

Disenchanted with the welfare model, proponents of the justice model sought several significant changes in practice and policy. The justice model did not centre itself upon any particular theory of the causes of crime (O'Connor, 1997). All advocates of the justice model sought to return the courts to the centre of juvenile justice and to restrict the juvenile justice system to criminal matters and not welfare matters. For civil libertarians the open court process together with due process could protect youths from excessive intervention from the state via departmental welfare strategies and abuses of power by the police (Warner, 1987). Determinate punishment that was proportionate to the seriousness of the crime and culpability of the offender was highlighted as the central purpose of sentencing (von Hirsch, 1976). Important too in the justice model is the principle that sentences should be as least restrictive as possible. The impetus to minimise interference in the lives of young people was driven by a number of factors. As well as viewing rehabilitation as ineffective, the justice model responded to the strong evidence that youths were stigmatised or labelled by the process of arrest, trial, and sentencing (Farrington, 1977; Lemert, 1972). Undoubtedly the justice model focussed upon the offence rather than the offender. Various aspects of the justice model appealed to the right, which itself particularly emphasised that young offenders should be held accountable for their criminal actions (Pratt, 1993).

But as a solution to the inadequacies of the welfare model, the justice model raised new complexities. Several concerns sprang from the heavy reliance upon the courts. Some were disdainful about the adversarial atmosphere of the courtroom and the long delays involved in processing young offenders (Department of Community Service, 1991). Further, no empirical data supported the assumption that the court process deterred either the individual criminals sentenced or potential criminals in wider society (Ashworth, 2000). Others urged that the court system disadvantages some groups of juveniles, such as those from lower socio-economic groups (O'Connor, 1997; see also Hennessey, 1999; Wundersitz, 1996b). Some court orders seemed to lack sensitivity to the realities of young offenders' lives. For instance, if youths absconded from the residence that had been specified in a custody order this could be treated as an additional offence, thereby contributing to their criminal record (Department of Community Service, 1991).

The justice model rapidly gathered momentum internationally during the 1980s and 1990s. In 1985 the United Nations adopted the *Standard Minimum Rules for the Administration of Juvenile Justice*, referred to as the *Beijing Rules*. These endorsed several important features of the justice model, including proportionality and accountability (Carney, 1997).²⁴ Nationally, the first steps towards formal recognition of the justice model were in the separation of juvenile welfare and juvenile justice. This occurred firstly in South Australia in 1979 (Wundersitz, 1996b). In other states this was achieved legislatively.²⁵ Legislative separation of the two spheres did not take place in Tasmania until 1997. This will be explained in more detail below. O'Connor (1997: 239) asserts that the justice model represents the 'new orthodoxy' in Australian juvenile justice policy. However, commentators agree that the policy developments were 'changes in emphasis rather than in direction' (Seymour, 1988: 170; Braithwaite, 1999). That is, each jurisdiction sought to balance the welfare and justice approaches in such a way that they might counter each others' weaknesses. Indeed, Seymour (1988) reflects that the caring ethos – the legacy of the early child savers – was not discarded.

3.1.3 Other influences

A number of other factors influenced the juvenile justice arena during recent decades aside from the welfare and justice models. Informal responses to crime, such as warnings for minor offences, were common practice amongst the police since the turn of the last century. It was not until the 1960s that official attempts to divert young offenders away from court were trialed in Australia (Seymour, 1988). Some jurisdictions opted to formalise police cautioning processes. Others established informal tribunals called panels (Pratt & Grimshaw, 1985). The general purpose of panels was to discuss the offence, the issues facing of the offender, and to counsel the offender. In some jurisdictions the panel could require the offender to enter into an undertaking to be of good behaviour (see further Wundersitz, 1996b). The appeal of diversion was – and still is – to prevent young people suffering negative consequences from appearing in court and to reduce the possibility of incarceration. Diversion is perceived by many as a

²⁴ Rules 5 and 6 respectively.

²⁵ For instance NSW passed the *Children (Care and Protection) Act 1987* (NSW) and the *Children (Criminal Proceedings) Act 1987* (NSW).

practical response to the fact that the majority of young offenders who are detected committing offences do not re-offend (Wundersitz, 1996b; Maxwell & Morris, 1993). Diversion of young offenders in appropriate circumstances was also given international recognition in the *Beijing Rules*.²⁶

Another influence upon juvenile justice are principles of crime control (Maxwell & Morris, 1993). Advocates of these principles are often referred to as the law and order lobby. They press the importance of protecting neighbourhoods and getting tough on crime, including youth crime (White & Alder, 1994). The lobby suggests, inter alia, that appropriate responses to youth crime are strong penalties and in particular different forms of custody to take troublesome youths off the streets (White, 1994). Internationally, the law and order lobby has at times successfully swayed political discourse on young criminals in Australia and overseas (White & Haines, 2000). The crime control approach has been charged with misunderstanding youth crime and promoting strategies that ultimately aggravate offending rates.

Finally, aspects of what is now known as restorative justice began to attract interest in the juvenile setting. As noted in chapter two, the use of victim-offender mediation in the criminal justice setting in various international jurisdictions drew the attention of the legislators in New Zealand in the 1980s. Moulding the concepts of mediation and Maori traditional dispute resolution techniques in the form of family group conferences enabled the New Zealand justice system to respond to some of the needs of victims and families (Maxwell & Morris, 1993). Review of the 1989 legislation also reveals clear influences from the welfare and justice models together with an interest in diversion. Maxwell and Morris (1993: 168) conclude that the formation of the new juvenile justice system in New Zealand 'resisted pressure to adopt a crime control approach'.

The developments in New Zealand themselves became an important influence in the reformulations of juvenile justice in Australia in the 1990s (O'Connor, 1997). In particular the innovation of family group conferencing became a tool that all the Australian jurisdictions noticed favourably. By the mid-1990s the link between conferencing and the more general restorative justice literature (as opposed to

²⁶ Rule 11.

reintegrative shaming as an arm of restorative justice) was apparent.²⁷ Conferencing and restorative justice was viewed as a solution to see-sawing policy shifts between the welfare model and the justice model – a clear way at last to balance the strengths and weaknesses of the models (see Braithwaite, 1999). From this perspective families could be given an appropriate way to support and help their child through the justice system. To some extent international agreements may have fanned the issue of empowering families in Australia (Carney, 1997). Certainly a 1991 Tasmanian government report mentions, amongst other instruments, the *Beijing Rules* (Department of Community Service, 1991). This covenant emphasised supporting families so that they can ‘fully assume [their] responsibilities within the community’ (Rule 14.2).

Others were interested in New Zealand style (non-police-run) conferences. I explained in chapter two that in 1991 the police in NSW copied the family group conference format. After the practice was emulated in Wagga Wagga the link to reintegrative shaming and, later, affect theory was noticed. In many circles, including police and politicians, the combination of police-run juvenile conferencing with reintegrative shaming was particularly appealing. Arguably the solution was perceived as encompassing (a) crime control approaches, (b) victims’ rights, (c) the principle of offender-accountability from the justice model, and (d) a healthy disdain for ineffective welfare therapies.

JUVENILE JUSTICE IN TASMANIA: THE 1980S AND 1990S

As with other states (see Freiberg et al., 1988: 63-66), Tasmania became particularly aware of the grievances identified by the justice model in the early 1980s when a number of nationally significant reports were produced (Carney Report, 1984; ALRC Report, 1981). In 1980 the Department of Community Services approached two consultants to identify essential areas of procedural legislative reform in Tasmania’s children’s courts system (Briscoe & Warner, 1986). The government planned to pass a new youth justice legislation in 1987 (Warner, pers. comm., 13/9/2001). This did not occur until 1997 and the Act was not proclaimed until February 2000, mainly because of the state’s fiscal constraints. The consultants’ qualitative observations raised several concerns, not all of

²⁷ As an anecdotal example of the rate at which restorative justice spread in Australia, Naffine’s (1993) piece on the philosophies of juvenile justice describes restorative justice in a short postscript.

which are listed here. The courtrooms and waiting areas did not facilitate adequate separation of juvenile offenders and adult offenders. The court proceedings for juvenile offenders were (a) highly legalistic and formal, (b) difficult for parents and young offenders to comprehend, (c) precluded participation by the offender, and (d) frequently resulted in long delays between the time of the offence and the final hearing (Briscoe & Warner, 1986). Additionally, of the 2500 annual juvenile appearances (a) 80% pleaded guilty, (b) between 50% to 60% of youths sentenced would leave the court without penalty, and (c) a further 10% of juveniles were leaving the court with fines of less than \$20 (Briscoe & Warner, 1986; Department of Community Services, 1991). Obviously the majority of cases involved very minor offences. The most common outcome was an admonishment and discharge. This outcome usually took the form of a verbal reproach from the magistrate and a discharge without a criminal conviction. The high rate of admonish and discharges during the 1980s is important to chapter four, which presents very interesting findings on the frequencies of such court outcomes from 1991 to 2001.

The consultants' recommendations highlighted the risk of stigmatising youths – minor or repeat offenders alike – through protracted and incomprehensible court proceedings (Briscoe & Warner, 1986). Another possible cause of stigmatisation that was identified was linked to court proceedings for welfare matters; it was suggested that children in need of care might be stigmatised by being treated similarly to offenders (Warner, 1987). The consultants' recommendations mirrored the justice model paradigm. Rather than exploring alternatives to court to avoid stigmatisation, they suggested that the court process could be streamlined to expedite juvenile cases and engage young offenders more effectively (Briscoe & Warner, 1986). It is important to note that at this stage the police, who were able to comment on the consultants' report along with other stakeholders,²⁸ affirmed their confidence in the positive effect that court proceedings could have upon young offenders. For example, the Commissioner commented that in court an 'atmosphere of formality' tends to create 'a lasting impression in the minds of young persons' (Briscoe & Warner, 1986: 20). This official police perspective was to change dramatically in the following decade, as discussed below.

²⁸ These included the Secretary of the Law Department, the Senior Magistrate, and the Law Society.

Five years after the report the state government made a formal description of its policy aims in juvenile justice. Significantly the issues paper did not abandon the welfare model. Rather it emphasised that the interests of young people and the community could be best served by balancing the welfare and justice approaches. In particular, the paper recommended that the 'flexibility and sensitivity' of the welfare approach be retained (Department of Community Services, 1991: 11). One way in which this could be achieved would be the institution of family group conferences. Conferences offered the ability to develop 'individual case management plans in consultation with the young offender themselves, their families and other significant people in their lives' (Department of Community Services, 1991: 20). The issues paper recommended police cautioning as the primary level of intervention before conferencing. The experience of other states and New Zealand with cautioning and conferencing were clearly guiding influences.²⁹ Other than flexibility, the benefits of diversion included (a) the empowerment of families to support young offenders and the strengthening of family ties, (b) avoiding the stigma of court for youths, and (c) fiscal savings from a potential dramatic reduction in juvenile court appearances. The final point indicates that, whilst the issue paper endorsed due process and saw the courts as having an important role, it clearly envisaged a new youth justice system where court appearances were a 'last resort' (Department of Community Services, 1991: 23).

3.2.1 *Welfare practice*

It might have appeared to some commentators that Tasmania was reluctant or at least uncertain as to whether to move away from its heavily welfare model oriented *Child Welfare Act 1960* (Tas) (see O'Connor, 1997).³⁰ It was not until the passing of the *Child, Young Persons and Their Families Act 1997* (Tas) and the *Youth Justice Act 1997* (Tas) that welfare was formally separated from justice. However, there are indications that practice in the justice and welfare sectors changed well before the legislative developments in 1997. First, it appears that a move towards decarceration began in the late 1980s. Youths in need of care and young offenders were housed in three institutions around the

²⁹ Panels as a form of diversion were specifically rejected, inter alia, because of their perceived propensity to stigmatise youths in the same way as court proceedings. See Pratt & Grimshaw (1985) on the United Kingdom experience with juvenile tribunals (cf Lee, 1995).

³⁰ Cunneen and White (2002) quote section 4 of the *Child Welfare Act 1960* (Tas) as an archetypal example of the welfare philosophy in legislation.

state. Importantly, between 1988 and 1991 two of the institutions were closed (Drelich, pers. comm., 15/5/2003).³¹ Secondly, welfare professionals also relate that by the early 1990s agreements had been reached between the welfare departments and the magistrates. The magistrates began to specify in their committal orders (a) the length of the committal, and (b) whether a young offender was to be incarcerated in the remaining juvenile detention centre (Warner, 1992; Drelich, pers. comm., 15/5/2003). Seemingly the welfare sector was voluntarily delineating its discretionary powers over juvenile offenders. Unfortunately it appears that records relating to these events were destroyed in a fire in government premises in 1999.

3.2.2 *Police practice*

Tensions between the police and welfare agencies that have existed in other states do not appear to have troubled Tasmania to the same extent (cf Trimboli, 2001; Power, 2000). The Department of Community Service's (1991) policy paper indicates that various government agencies were happy to work with the police and to recognise their role in having first contact with most young offenders. Anecdotal reports of long serving police and welfare professionals suggest that positive working relationships extended back to the 1970s (Lennox, pers. comm., 27/8/2001; Drelich, pers. comm., 10/3/2002).³²

Up until 1994-95 Tasmanian police had concentrated upon cautioning as a form of diversion. Informal cautions were not covered by any regulations. Formal cautions, as described in the *Standing Orders*, were conducted at police stations by inspectors.³³ In 1995 Senior Constable John Lennox in Tasmania's Eastern District received training, with others, in Wagga style juvenile conferencing.³⁴ The training was by Terry O'Connell, who was instrumental in establishing the Wagga model of conferencing in 1991. Lennox began Wagga style conferencing and the process quickly received the

³¹ Les Drelich has worked in state government welfare departments since the 1970s. He is currently one of three Youth Justice Coordinators who manage community conferencing in Tasmania. Another factor in the closing of the two institutions may well have been fiscal concerns. Rationalisation of several government departments, including the Department of Community Services, occurred during this period.

³² Senior Constable John Lennox coordinates youth justice for Tasmania's Eastern District. He was one of the most important figures in the establishment of police conferencing in Tasmania and is referred to frequently in this thesis.

³³ Formal cautions were used for minor offences committed by first time offenders who had admitted their guilt (*Standing Orders*, 109.6 (4), 109.6 (7); cited in Warner, 1992).

³⁴ O'Connell initially came to Tasmania with Margaret Thorsborne to teach a group consisting of teachers and some police officers.

enthusiastic backing of high ranking officers. In April 1995 Acting District Superintendent Bennett distributed a memo to the divisions of the Easter District concerning cautioning and what he called ‘diversionary conferencing’. It stated that police had the option to either caution juveniles or to conduct a ‘diversionary conference’. The definition of a ‘diversionary conference’ was unmistakably descriptive of a Wagga style conference – victims, offenders, their respective supporters, and a police ‘facilitator’ discussing a crime and deciding how best to repair the harm it caused. One very important sentence in the memo stated that diversionary conferences would be ‘done under the guise of an official caution, as a pre-court option for police’ (Bennett, pers. comm., 11/4/1995).³⁵ That is, the provisions concerning formal cautions in the *Standing Orders* could be used to conduct Wagga style, police-run conferences. These events had a profound effect on the way in which the *Youth Justice Act 1997* (Tas) was implemented in practice. As the next section reveals, the police interpreted section 10 of the Act – establishing formal cautions – to mean that they could facilitate police conferences. Once again, police conferences are conducted ‘under the guise of formal cautions.’

Regarding the efficacy of court, by 1998 internal police documents indicate that policy had moved diametrically away from a belief in the positive impact of court proceedings on juvenile offenders. A memo from the Commissioner in October 1998 emphasised the importance of maximising levels of diversion. Significantly, it stated that the perception amongst some officers that ‘anything short of a prosecution is a ‘let off’ was an ‘impediment to achieving high levels of conferencing’. Confidence in court proceedings was portrayed as old fashioned and misguided.

THE YOUTH JUSTICE ACT 1997 (TAS)

Various influences are evident in the *Youth Justice Act (1997)* (Tas). It seems that the Act has employed many of the policy considerations articulated by the Department of Community Services (1991). Clearly diversion is one of the main purposes of the legislation, as stated in section 7. The provisions outlining community conferences also allow for very specific outcomes for young offenders. For instance, in addition to

³⁵ Correspondences provided by John Lennox.

restitution, compensation, community service orders, and apologies, section 16(1)(g) provides that youths can be required to enter into an undertaking 'to do anything else that may be appropriate in the circumstances'. This arguably reflects the earlier emphasis on the importance of 'flexibility' in dealing with juveniles. More obvious is the importance placed on families. Amongst other things, the family bonds are to be preserved and strengthened in dealing with young offenders.³⁶ Furthermore, an objective of the Act is to 'enhance and reinforce' the role of families in minimising youth crime, punishing and managing young offenders, and directing youths to becoming 'responsible citizens'.³⁷ In this provision the influence of the justice model is evident. The Act emphasises the justice model far more than it does the welfare model. The objectives and principles of the statute state that the community should be protected from crime, that juvenile offenders are to be encouraged to accept personal responsibility for their behaviour, and that offenders should learn about the human impact of crime. A number of sections emphasise the importance of proportionality (ss. 4(e), 5(1)(b)(i),(j)) and the avoidance of unnecessary interference in the lives of young offenders (ss. 5(2)(c), (d)). Regarding welfare considerations, the appropriate rehabilitation of offenders is identified as an objective of the Act, although so too is the appropriate punishment of offenders (s. 4(e)).

As discussed in chapter two, Tasmania's new juvenile justice system is similar to South Australia's (2.3). The police are the gate-keepers of the new system (see 2.3.3 and 2.4). Previously the police had three options when dealing with juveniles: to informally caution them, to arrange for an inspector to administer a formal caution, or to direct youths to court. The Act replaced this with a four tiered system.³⁸ At the first tier it gave legislative recognition to the police discretion to informally caution youths. The second and third tiers included formal cautions administered by police and 'community conferences' (juvenile conferences) overseen by the DHHS with independent facilitators. Both formal cautions and community conferences can result in undertakings for the offenders. Failure to complete the undertakings agreed to in a community conference can lead to court. The same does not apply to undertakings agreed to in a formal

³⁶ *Youth Justice Act 1997* (Tas), s. 5(2)(b).

³⁷ *Youth Justice Act 1997* (Tas), s. 4(f).

³⁸ *Youth Justice Act 1997* (Tas), ss. 8(1), 9(1), 10(1), 13(1).

caution. Court was identified as the final tier. Youths are defined as those aged from 10 to 17 years.³⁹ Youths can be diverted to either type of caution or a community conference when (a) they admit their guilt, (b) they give written consent to be diverted from court, and (c) when the offence they have committed is not a 'proscribed offence'.⁴⁰ The definition of proscribed offence includes three age brackets: 10 to 13 years, 14 to 16 years, and 17 years. The younger an offender the more serious their charge may be whilst still being eligible for diversion (see 2.3.1). Notably, diversion is possible for some very serious offences, including wounding, assault, and indecent sexual assault. As discussed in chapter two (2.3), in comparison to other jurisdictions Tasmania grants the police considerable powers. As well as being the primary gate-keepers, the police can administer formal cautions and require youths to enter into undertakings. However, clearly the choice of independently facilitated community conferences over police-run conferences was a significant one. This choice resonates with the debate that existed in the 1990s concerning New Zealand style and Wagga style conferences. The discussion will return to this issue in the following section.

Probably the most significant development for the protection of the legal rights of young people was the legislative separation of juvenile welfare and juvenile justice. The spheres were divided with the passing of the *Child, Young Person and Their Families Act* (1997) (Tas) and the *Youth Justice Act 1997* (Tas) respectively. This prevents the courts from treating youths in need of care as offenders, or offenders as those in need of welfare intervention. The *Youth Justice Act 1997* (Tas) (ss. 47(1)(h), 81) also removed the possibility for indeterminate sentences by requiring courts to specify periods of detention. However, few steps have been taken to ensure that youths are informed of their legal rights. Certainly there are no statutory provisions, as in New Zealand, which place an onus on the police to explain to juveniles when they have an option to make a statement or accompany an officer to a station. Section 9(5) requires that officers inform youths of their entitlement to legal advice, but this is only to aid them in their decision as to whether to consent to a diversionary procedure after they have admitted their guilt. Section 15(2) provides that legal advocates can attend a conference if the facilitator

³⁹ *Youth Justice Act 1997* (Tas), s. 3(1). The new Act has raised the age of criminal responsibility from 7 to 10 years. Previously, the *Criminal Code Act 1924* (Tas) provided that acts or omissions of people under the age of 7 could not constitute an offence.

⁴⁰ *Youth Justice Act 1997* (Tas), ss. 7, 9(2), 3(1).

deems their presence appropriate. (As discussed below, this has never occurred in practice.)

The *Youth Justice Act (1997)* (Tas) increased the courts sentencing options. Under the *Child Welfare Act 1960* (Tas) sentencing options were limited to (a) fines, (b) compensation and restitution orders, (c) orders for community service for youths aged 16, (d) supervision and probation orders, (e) a declaration that a young person be made a ward of the State, or (f) a committal order that a young offender be remanded for observation by the State for up to three months.⁴¹ Now, in addition to fines and detention orders the courts can impose good behaviour bonds, orders for restitution or compensation for victims, suspended detention orders, and community service orders for youths over the age of twelve.⁴² Importantly the courts can also require that a community conference be convened under section 37. This means that the court effectively has the power to overrule the police gate-keeping decision and divert cases away from the court process. It is useful to list the sentencing options available under the old system and the new system. This information becomes important in chapter four to explain how sentencing categories were generated for the purposes of analysing statistics from Tasmania police (4.2). Tables 3.1 and 3.2 list most of the sentencing options available under the old system and the new system. A description of the practical meaning of the sentences is provided also (adapted from Warner, 1991, 2002; Department of Community Services, 1991: 34-38).

⁴¹ *Child Welfare Act 1960* (Tas) ss. 21(2)-(4), 22, 23(1)(b), 23(1)(c), 24. Compensation and restitution orders could be given under the *Criminal Code Act 1924* (Tas) (s. 424). Juveniles 16 years and older could be sentenced to prison for indictable offences under section 21(1).

⁴² *Youth Justice Act 1997* (Tas), s. 47(1)-(2).

Table 3.1 Sentences available for young offenders under the old system in the Children's Court

Sentence	Description
Admonish and discharge	Usually involved an admonition by the court and a discharge without penalty or conviction. Was intended to formalise the court's warning about the consequences of future offences.
Good behaviour bonds <i>CWA</i> s. 23(1)(a)	A form of contract between the offender and the court during which the offender agreed to be of good behaviour for a specified period, less than 12 months. A breach of this agreement could result in an offence.
Conviction recorded <i>CWA</i> ss. 20, 23 (1)(a), <i>POA</i> (s. 7(3))	Convictions did not have to be recorded for juveniles found guilty of most offences. Convictions could be recorded as the sole sentencing outcome or in combination with other sentences.
Fines, and orders for restitution and compensation <i>CWA</i> s. 21(2), <i>CCA</i> s. 424	Monetary penalties generally used for young offenders in employment. In addition to fines the court could order that the offender provide restitution and/or compensation for the benefit of the victim
Licence disqualification <i>TA</i> ss. 34, 35 (2)(a)	Discretion to disqualify from holding a driving licence for offences including reckless and negligent driving. This sentencing outcome was used – and still is – often in juvenile cases involving motor vehicle theft. The court could specify exactly when the period of disqualification came into effect. In practise this meant that young offenders who did not have a licence could be prevented from attaining one in the future for a set period. For example, a 14 year old, who could normally attain a licence at the age of 16, might be prevented from attaining a licence until the age of 17.
Supervision and probation orders <i>CWA</i> ss. 22(1), 23(1)(b), <i>POA</i> s. 7(1)(d)	Supervision orders could be made in relation to all children (then classified as 7-16 years) and could be 3 years in length. Child welfare officers or probation officers supervised the behaviour of the child and any conditions the court deemed necessary. Probation orders had the same effect except they could only be made in relation to those aged 15 or older and involved supervision by probation officers.
Community service orders <i>POA</i> s. 10	Applicable only to youths aged 16. Required offenders to perform unpaid work in the community.
Wardship <i>CWA</i> ss. 23(1)(c), 46, 49, 50	Made the Director of Community Services the sole guardian of a child: able to (a) determine whether they lived in an institution, with foster parent, or with their own parents/relatives, and (b) control the child's wages or property. Wardship generally terminated when the child reached the age of 18.
Committal orders <i>CWA</i> s. 23(1A) Imprisonment <i>CWA</i> s. 21(1)	Committal orders enabled the Director of Community Services to direct that a child be detained in an institution. Could be coupled with wardship. Applied to youths aged 7-16. Those aged 16 could be imprisoned in the same manner as adults.

CWA = *Child Welfare Act 1960* (Tas)

POA = *Probation of Offenders Act 1973* (Tas)

TA = *Traffic Act 1925* (Tas)

CCA = *Criminal Code Act 1924* (Tas)

Table 3.2 Sentences available for young offenders under the new system in the Children's Court

Sentence	Description
Dismiss and reprimand YJA s. 47(1)(b)	In effect, identical to an admonish and discharge as under the old system (see Table 3.1).
Good behaviour bonds YJA ss. 47(1)(c), 51.	As above, except with a limitation of 6 months (see Table 3.1).
Conviction recorded YJA s. 49	Convictions cannot be recorded if the youth is dismissed and reprimanded or given a good behaviour bond. With the remaining sentencing options the court still has wide discretion in deciding whether to record a conviction. Convictions can be recorded as the sole sentencing outcome.
Fines, and orders for restitution and compensation YJA s. 47(1)(e), (2)(b)-(c)	As above (see Table 3.1).
Licence disqualification VTA ss. 34, 35 (2)(a)	As above (see Table 3.1).
Probation orders YJA s. 47(1)(f), POA s. 7(1)(d)	Probation orders are available for all youths (aged 10-17) and require the offender to submit to the supervision and directions of probation officers.
Community conference YJA s. 37	The court can order that, if the youth agrees, a community conference be convened (a) without hearing the matter, (b) in lieu of a sentence, or (c) in combination with other sentence outcomes.
Community service order YJA s. 47(1)(g)	As above (see Table 3.1), except available for offenders over the age of 12.
Detention orders and suspended detention orders YJA s. 47(1)(h), (2)(a), 79, 90	Youths cannot be imprisoned. However, the court can order that a youth serve a period of detention in a detention centre. Suspended detention orders can specify 12 months for youths under the age of 16, and up to 2 years for youths aged 16-17. During this period the youth must not commit an offence which if committed by an adult could result in imprisonment. Special conditions can also be attached to suspended detention orders, such as abstaining from alcohol and reporting to a youth justice worker.

YJA = *Youth Justice Act 1997* (Tas)

VTA = *Vehicle and Traffic Act 1999* (Tas)

POA = *Probation of Offenders Act 1973* (Tas)

SA = *Sentencing Act 1997* (Tas)

3.4 FORMAL CAUTIONS AND COMMUNITY CONFERENCES IN PRACTICE

This is one of the most important descriptive sections of the thesis. It describes how police formal cautions and DHHS community conferences are conducted in practice. The first section describes how the police operate both cautions and conferences under the legislative provisions for formal cautions. This section gives some consideration to principles of statutory interpretation and concludes that the police do have the powers to conduct conferences under the *Youth Justice Act 1997* (Tas). The shorter second section highlights how the police and DHHS interact in the operation of community conferences.

3.4.1 *Formal cautions*

‘Formal caution’ is defined under section 3 of the *Youth Justice Act 1997* (Tas) simply as ‘a caution administered under section 10’. Section 10 does not specify the format of a formal caution: how it is to begin, who is to speak, what is to be discussed, or what the police officer is to say. It merely states that formal cautions ‘against further offending’ are to be ‘administered’ by police officers.⁴³ Section 10 does specify what undertakings the officer can require the youth to enter. These include (a) compensation for the injury suffered or expenses incurred by victims of the offence, (b) restitution, (c) up to 35 hours community service, (d) an apology to the victim, and (e) an undertaking to do anything else appropriate in the circumstances.⁴⁴

The most unusual aspect of these provisions is that under section 9(3) victims should be given the ‘opportunity to attend the administration of the formal caution.’ Tasmania is the only jurisdiction in which this occurs. There is no mention of victims being able to speak during the administration of the formal caution. In fact, under section 9(3) the officer is not obliged to invite the victim at all, but only if it is ‘appropriate in all the circumstances’. Indeed, formal cautions can be conducted with the young offender alone. Section 10(4)(a) states that formal cautions be administered in the presence of a

⁴³ *Youth Justice Act 1997* (Tas), s. 3: to administer a formal caution officers must be authorised by the Commissioner.

⁴⁴ *Youth Justice Act 1997* (Tas), s. 10(1). Formal cautions may be treated as evidence of prior offending history if the youth later appears in court on another matter (ss. 10(1), 10(3)(b), 10(4)(a)). The caution itself can be administered by a representative of a community group with whom the youth identifies, such as an Aboriginal Elder (ss. 11, 12).

guardian or responsible adult 'if practicable'. On the other hand, young offenders and their guardians or the responsible adult present are permitted to speak. Section 10(5) states that these parties must be allowed to comment on any undertakings that the officer proposes.

The police perspective of section 10 is that it enables them not only to 'administer cautions' but to facilitate juvenile conferences. They highlight two aspects of the legislation. First, that officers can require youths to enter into undertakings for the benefit of the victim. Secondly, that the victim may be present at the formal caution. Amongst other things, they argue that this implies that interaction between the officer, the victim, and the offender can take place at a formal caution. The officer needs to be able to determine the needs of the victim and the capabilities of the offender in determining a suitable undertaking (Lennox, pers. comm., 5/3/2002). For instance, the victim may wish the offender to repair a vandalised fence on a certain date. But the offender may not be able to arrange transport for that time or otherwise complete the undertaking for any number of genuine reasons. A different undertaking may need to be arranged that is practical for the youth and satisfactory for the victim. In any case, victim's views often change dramatically after they meet an offender and so do their perceptions of desirable outcomes (Lennox, pers. comm., 5/3/2002). To disallow the victim to speak at a formal caution or to interact with the offender would result in an absurdity. That is, the pragmatics of the undertakings could not be sorted out at that point. Furthermore, if the officer believes that an apology to the victim is appropriate and the young offender agrees so, it seems obvious that this should be able to occur during the formal caution when the victim and the offender are together (Lennox, pers. comm., 5/3/2002). From my own view, Lennox's arguments are logical. However, as I will explain below, I do not think that police conferences are in keeping with the spirit of *Youth Justice Act 1997* (Tas).

The Commissioner's *Instructions and Guidelines* (2002) concerning the *Youth Justice Act 1997* (Tas) concentrate primarily on formal cautions. They state that a formal caution is a 'formal and structured caution facilitated by a police officer [which] may assist the youth to realise the effect their actions have had on other people and society' (*Instructions and Guidelines*, 2002: 4). Furthermore;

The process may also engage the victim and provides them with an opportunity to participate in the justice system. The victim may express his/her feelings about the crime, seek an explanation from the offender and have input into the disciplining process. ... The youth, victim and police are able to discuss the negative consequences of the offence and plan how the youth may repair the harm caused (*Instructions and Guidelines*, 2002: 4).

The guidelines go on to specify the structure of a formal caution. This structure is unmistakably that of a Wagga style conference (see Moore, 1993; Moore, 1995; Braithwaite & Mugford, 1994). In particular the guidelines direct officers to invite the offender to describe their actions, to invite the victim to respond and then others to respond, and then to encourage 'full discussion' (*Instructions and Guidelines*, 2002: 12). After this the officer invites the group to make suggestions about ways in which the youth can repair the harm suffered by the victim. An outcome that suits all parties is sought and the youth signs a written agreement to complete the undertakings.

This is precisely what occurs in practice, at least in the 33 'formal cautions' that I observed as part of this study.⁴⁵ The practice is described in detail in chapter six. The reason why practice concurs so closely with the 2002 guidelines is because the guidelines were drafted well after the practices had been developed. All of the points in the guidelines were included in a police training course I observed in October 2000, which is discussed in chapter five. In fact, in 1998 the first official policy statement concerning police conferencing was issued from the Commissioner's Office. The memo clearly differentiated conferencing from cautioning.⁴⁶ It stated that a conference was the preferable form of diversion. Cautions should be used, the memo clarified, where there was no victim or the victim did not want to attend. In my own observations of practice this differs between officers. Some officers conduct police conferences when a victim is able to attend. Without the victim the procedure they follow is that of the nationally accepted term of a 'formal caution' – a warning conducted at a police station (see Seymour, 1988: 234-241). Other officers never conduct formal cautions in this way.

⁴⁵ Three 'formal cautions' were observed prior to the development of the questionnaires and a further 30 were observed employing the methodology.

⁴⁶ It also explains the effectiveness of conferencing in terms of 'restorative justice', which is the first documented official use of the term in Tasmania.

That is, regardless of whether a victim is present they facilitate a conference using parents or other supporters to generate discussion on the crime and a suitable resolution.

Another feature of police conferencing practice is that sometimes the officers invite third parties – individuals who are not significant others of the offender and are not victims of the offence. Examples include members of the fire brigade, teachers from the offender's school, counsellors, and so on. These people are invited to police conferences because the police facilitators believe they will make a valuable contribution to the restorative process. For example, one fire fighter operates a program for young people who commit offences such as arson. The purpose of the program is to inform youths about the dangers of fire. Often offenders were asked to participate in the program. Such third persons were clearly not attending the conference as a 'responsible adult' to oversee the youth's interests for the purposes of section 10. On other occasions the police facilitators arranged for youths to attend anger management courses, skill development courses and the like. Finally, the numbers of people attending police conferences fluctuated as much as the DHHS-run community conferences. Indeed, the largest conference observed was a police-run one, involving six offenders and 13 others.

One feature of the *Instructions and Guidelines* (2002) that is obviously at odds with the *Youth Justice Act 1997* (Tas) concerns the offender's obligation to complete undertakings agreed to in a formal caution. The *Instructions and Guidelines* (2002: 13) state that the youth must be informed 'that he or she will be liable for prosecution if the youth does not ... complete the undertakings required'. This is untrue. Unlike (a) police cautions in South Australia and (b) community conferences in Tasmania, if a young person does not complete the undertakings they agreed to in a formal caution no further action can be taken. However, the police do monitor whether undertakings are completed. Failure to complete undertakings agreed to in a formal caution will be taken into account by the police if the youth concerned offends again. As chapter six discusses further, only rarely did officers actually state that prosecution was a possible outcome for non-completion of undertakings. More commonly the officers specifically avoided the whole issue.⁴⁷

⁴⁷ A number of officers would like the legislation to be changed so that the undertakings in formal cautions were enforceable at court (Lennox, pers. comm., 21/11/2000).

After the *Youth Justice Act 1997* (Tas) was proclaimed it became clear to the DHHS that the police were conducting an unknown number of conferences ostensibly as ‘formal cautions’. Upon seeking legal advice, the DHHS formed the view that the police were not acting ultra vires – beyond their powers – in facilitating discussion between the youth, their guardians, and the victim and formulating ways in which the offender could repair the damage caused (Vickers, pers. comm., 29/5/2003).⁴⁸ The main reason for this view was that the Act allowed victims to attend conferences and did not stipulate that interaction or discussion could not occur. Another incentive for the DHHS to take this view was to protect its good relations with the police and to ensure their cooperation in the implementation of the new system (Vickers, pers. comm., 29/5/2003). Arguably this was an astute political decision. In retrospect, to have fought to prevent the police from conducting conferences could have damaged the enthusiasm with which the force had embraced diversion and restorative justice. This in turn may have affected police gate-keeping practices in (a) the total number of diversions or (b) the number of diversions to community conferences.

I agree with the DHHS view of the *Youth Justice Act (1997)* (Tas). However, whilst police conferences may not be ultra vires, arguably they are not in keeping with the spirit of the Act. The *Acts Interpretation Act 1931* (Tas) (s. 8A) states that an ‘interpretation that promotes the purpose or object of the Act is to be preferred to an interpretation that does not promote the purpose or object’, ‘whether or not the purpose or object is expressly stated in the Act’.⁴⁹ Perhaps the single most important point to make is that in the context of when the *Youth Justice Act 1997* (Tas) was formed there was a prominent national debate over police conferencing and the expansion of police powers. A choice existed between the Wagga model of police conferencing or the New Zealand model of independently facilitated conferences. Most of the jurisdictions chose the New Zealand model and two chose the Wagga model, namely the Northern Territory and the ACT. No jurisdiction chose both. South Australia instituted a diversion scheme with (a) a form of formal cautioning which granted the police a heavy role in diversion, and (b) New Zealand model conferences. Arguably the purpose of the *Youth Justice Act 1997* (Tas) was

⁴⁸ Catharine Vickers was the DHHS Project Manager for the implementation of the *Youth Justice Act 1997* (Tas) in 2000.

⁴⁹ Under the *Acts Interpretation Act 1931* (Tas) (s. 8B) it is also permissible in interpreting legislation to consider extraneous material, that is material other than the Act itself.

to establish a system almost identical to this – which categorically did not involve Wagga style conferences. Other arguments could focus on the language used by the Act.⁵⁰

3.4.2 Community conferences

There are three Youth Justice Coordinators in the DHHS. In some instances the police discuss particular cases with these coordinators to determine the suitability of community conferencing for individual offenders. Their central role is to choose which independent facilitator deals with each community conference. Coordinators assist facilitators in preparing for conferences. At their own instigation, or if they are invited by the facilitator, coordinators sometimes attend community conferences with the specific role of explaining to the participants their options in determining suitable undertakings for the young offender. An issue that is developed in chapter six is that coordinators also have a long list of programs designed to help young people in different ways, identical to those used by police in their conferences (see 3.4.1). At the community conference the coordinator can describe various programs for the participants to consider as undertakings. The coordinators are also aware whether the programs have vacancies for new entries. The *Youth Justice Act 1997* (Tas) permits the use of such programs as undertakings under section 16(1)(g).

The actual practice of community conferences is much the same as that described in chapter two, and is discussed in detail in chapter six. Facilitators are paid to spend up to 10 hours preparing conferences, which includes face-to-face briefing for the main participants. Strangely the Act states that young offenders are entitled to one supporter only.⁵¹ This provision is ignored. About two thirds of conferences involve two or more supporters for the youth (see further 6.2). Facilitators invite victims and their supporters and anyone else they feel may be able to give special input, such as counsellors, teachers, the fire fighter referred to previously, and so on. So called ‘victimless crimes’ may involve representatives from the local council, for instance, to give an idea of the impact of the offence. For offences such as shoplifting representatives of the company affected may be invited to attend. All conferences are attended by a police officer. In practice

⁵⁰ Most interesting is the terminology used for both informal cautions and formal cautions, namely ‘cautioning an offender against further offending’ (*Youth Justice Act 1997* (Tas), ss. 8(1), 10(1)). Additionally, whilst both types of cautions are ‘cautions administered’, community conferences are defined as ‘conferences convened’ (s. 3).

⁵¹ *Youth Justice Act 1997* (Tas), s. 15(3).

the officers who attend community conferences tend to be the authorised officers who are experienced at conducting police cautions *and conferences*. Arrival at the conference is staggered so that the victim and their supporters arrive 15 minutes before the offender. After an introduction and explanation of the conferencing process, the facilitator in turn invites the offender, the victim and the others to describe their perspective of the offence. The discussion then turns towards appropriate reparation, which can include (a) compensation, (b) restitution, (c) up to 70 hours community service, (d) an apology, (e) or anything else appropriate in the circumstances.⁵² The victim, the offender, and the police officer must reach an agreement.⁵³ Most community conferences finish with what is called the 'breaking of the bread' – light refreshments and a chance to talk, which may last up to half an hour. If an agreement is not reached on the day, or if the youth fails to complete their undertakings the police have the discretion to refer the matter to court.⁵⁴ Facilitators have the power to adjourn a community conference under section 17(5).

CONCLUSION

Tasmania's juvenile justice system has evolved in an unusual way. The policy issues that were debated in Tasmania into the early 1990s were similar to those considered elsewhere in Australia. Its *Youth Justice Act (1997)* (Tas) was also unremarkable by national standards, instituting formal cautioning and the New Zealand model of conferencing in a similar fashion to South Australia. However, prior to the passing of the legislation one police district began trialing the Wagga model and this practice quickly received the affirmation of the senior ranks. When the legislation was proclaimed in 2000 the police continued to employ the Wagga model under the guise of formal cautioning. The government welfare sector did not oppose this development, mainly because of ambiguity in the *Youth Justice Act (1997)* (Tas). Tasmania's experience has been characterised by a willingness between the police and government sectors to cooperate and arguably an aversion to confrontation. This is commendable. Indeed in chapter six I point to a number of reasons why this rapport is a strength of the Tasmanian system. Yet, Tasmania's experience has equally been characterised by an

⁵² *Youth Justice Act 1997* (Tas), s. 16(1).

⁵³ *Youth Justice Act 1997* (Tas), s. 17(4).

⁵⁴ *Youth Justice Act 1997* (Tas), s. 20(2).

unreflective and unplanned acceptance of two theoretically different approaches to conferencing and restorative justice. How will the Wagga model and the New Zealand model operate side by side in the Tasmanian context? Chapters five and six address this question by reviewing the selection and training of conferencing practitioners and their practices. However, preceding this the discussion will next present original quantitative data on diversion, net-widening, gate-keeping, and sentencing trends in the new Tasmanian juvenile justice system.

CHAPTER FOUR

DIVERSION, NET-WIDENING, GATE-KEEPING, AND SENTENCING IN TASMANIA

Chapter two canvassed some of the systemic issues that have troubled juvenile conferencing schemes in the past. One of the deceptively simple aims of juvenile conferencing is to divert as many young people away from court as possible. Previous diversion systems have failed to do this. Worse, once equipped with diversionary practices such as cautions and conferences, some juvenile justice systems have actually increased the number of youths who have contact with an arm of the criminal justice system (Ditchfield, 1976). This phenomenon is known as net-widening. Other unintended effects of diversion might include harsher treatment of repeat offenders by the courts (Cohen, 1985). No Tasmanian government or independent agency has attempted to analyse whether these complex problems are affecting the new juvenile justice system. Without any annual reports or other forms of quantitative data generated by government departments at hand, the present study undertook an original statistical analysis of the central police database in Tasmania dating back to 1991.⁵⁵

The *Youth Justice Act 1997* (Tas) clearly sets a true reduction in the frequency of juvenile court appearances as one of the primary goals of the Tasmanian juvenile justice system (see 3.3). In particular, the Act intended to divert minor offenders away from court. Hence the most fundamental research question for the present study was whether the diversion of minor juvenile offenders is occurring in Tasmania. The research presented in this chapter strongly suggests that this goal has been met. It seems that diversion was not altogether the result of the proclamation of the *Youth Justice Act 1997* (Tas) but the continuation of a consistent trend throughout the 1990s. The second most important research question to be asked of the new Tasmanian system was whether there was any evidence of net-widening. Such evidence would heavily qualify the positive findings concerning diversion. Indeed, dramatic signs of net-widening could be used to argue

⁵⁵ The Department of Health and Human Services, Tasmania, ceased producing detailed statistics on juvenile offenders in 1991.

that the new system is worse than its predecessor (Cohen, 1985; cf Braithwaite, 1999). However, encouraging results are presented that indicate that no net-widening has occurred in the first two and a half years of the new juvenile justice system (January 2000 – May 2002). These findings concerning diversion and net-widening reflect positively upon Tasmania police and the way they have administered their gate-keeping function. Not quite as clear are the results concerning sentencing trends. The single worrying aspect of these findings concerns an increase in the use of detention.

A necessary precursor to the presentation and discussion of these results is a description of the source of the data, the central Tasmanian police database. Important too is a detailed description of how the data were extracted and the techniques that were employed to ready the data for statistical analysis. Discussion of the results will include an explanation of the statistical methods used, namely regression analyses, the rationale behind them, and the central research questions. Several figures and tables present the most important findings. The discussion will critically examine possible interpretations of the findings and consider implications for the systemic functioning of the Tasmanian juvenile justice system.

4.1 DESCRIPTION OF THE INFORMATION BUREAU SYSTEM

In the early stages of the research four separate databases were assessed to see whether they could yield data concerning diversion, net-widening and gate-keeping. Two relevant databases are operated by the Department of Police and Public Safety (hereafter “Tasmania Police”), a third is operated by the Department of Health and Human Services (DHHS) and a fourth by the Magistrates Court of Tasmania. Open discussions with information technology personnel in each department were held concerning the databases and their suitability to meet the research questions.⁵⁶ Additionally, manuals and users’ guides for three of the databases were examined. Although I initially intended to use a combination of information from different databases, it became clear that one database alone, the Tasmania Police Information Bureau System (IBS), would be best suited. The IBS is the oldest state-wide database that can provide data on the treatment of young offenders by the criminal justice system.

⁵⁶ Personnel included Richard Wylie from the Magistrates Court of Tasmania, Lin MacQueen in the Department of Health and Human Services, and Steven Levis, John Schofield and Pilar Bastias-Perez in Tasmania Police.

The IBS was developed in 1989 and it has several functions. It acts as a nucleus for 19 separate police databases which record information on all police concerns, ranging from traffic infringements to call centre communication and crime analysis. Perhaps the most important function of the IBS is to record information about most individuals that come in contact with the police, including youths who have admitted to an offence and have been sent to a formal caution, a community conference, or court. The officer who has dealt with or arrested a person generally enters the information about them.

Apart from name, address, sex and age, the police may choose to enter considerable detail about an individual depending on the seriousness of the alleged offences. Details include previous addresses, aliases, nicknames, fingerprints and photographs, occupation, and modus operandi. A physical description may include marks and features, hair and eye colour, height, build, race and complexion. Clearly, this data is valuable for police investigations. However, aspects of the database are limited for data analysis, namely those fields which are recorded irregularly. Data can be entered irregularly for three reasons. First, there are no systems in place that force officers to enter data in all fields other than an alleged offender's name, address, sex and age. For instance, unfortunately for the present study the 'occupation' of juveniles is not often recorded. Secondly, it is acceptable for police officers to enter information in some of the fields based on their impressions. An important example is the field 'race'; an officer may simply enter 'white' based on the appearance of an individual who in fact identifies as a member of the Tasmanian Aboriginal community. This irregularity has prevented the present study from analysing data on racial issues. Finally, many fields allow officers to enter data as 'free text', that is, with idiosyncratic descriptions. For instance, 'white', 'Anglo-Saxon', or 'Caucasian' might be entered to describe the same person.

However, a great deal of information concerning juveniles' treatment by the criminal justice system can be extracted from the IBS. Much of this information is automatically transferred to the IBS from other police databases. One important database that is linked to the IBS is the Prosecutions System, which records court proceedings. All offences committed by an individual are recorded using a coding system which categorises all offences into different classes. This coding system overcomes many of the vagaries of free text. Whilst the coding system is considered to be accurate it is still subject to human error, though the same frailty affects most databases (Levis, pers.

comm., 20/9/2000).⁵⁷ Also available are the date of the offence (or offences), the court at which the individual appeared, and a free text description of the sentence imposed. The free text sentencing field is generally accurate, though without a coding system or uniform terms the field is impossible to analyse electronically.

Meetings with the Tasmania Police information technology personnel began in October 2000. In July 2002 raw data was received. Although the types of data that concerned the research were easily viewed on the IBS, actually extracting that data and reformatting it presented numerous difficulties for the Tasmania Police information technology personnel. The IBS was designed with *Crystal*, a database development program. *Crystal* proved to be particularly inflexible software. Four police information technology personnel spent an estimated 45 hours extracting the data. Indeed, high levels of cooperation marked all the dealings with the police, in contrast to experiences elsewhere. Trimboli (2000), for instance, was refused access to the New South Wales police data base in her study of conferencing.

The raw data canvassed the entire IBS. That is, every recorded contact, excluding informal cautions, between individuals and the Tasmanian criminal justice system from April 1991 to May 2002. The data consisted of over one million records, each record representing one matter. Each matter concerned one or more offences for which an individual had admitted guilt or had been found guilty before the court. The raw data received from Tasmania Police contained data under the following column headings: person ID, sex, date of birth, court location, court date, court outcome, and description. Table 4.1, below, is an actual screen copy from the raw data. (In this table and the tables that follow some details were altered to further protect anonymity.)

Table 4.1 Example of IBS raw data received from Tasmania Police

person_id	sex	dob	court_location	court_date	court_outcome	description
593638	M	3/11/86		3/16/02	FORMALLY CAUTIONED AT	POSSESS LIQUOR IN PUBLIC
593645	M	11/5/50	LAUNCESTON	9/27/01	FINED \$110 COSTS \$36.65	DISOBEY TRAFFIC LIGHT
593836	M	6/26/88		3/21/02	FORMALLY CAUTIONED AT	DESTROY PROPERTY

To protect anonymity, before providing the data for the present research, the police generated a person ID for each offender. The sex and the date of birth of each offender were included. The court location field listed the town in which the case was heard. No

⁵⁷ Steven Levis is the Manager of Information Services for Tasmania Police.

court location was entered if the matter had been dealt with by a diversionary procedure. Important also was the data contained in the court date field. This recorded the date of disposal and not the date of the hearing. The court outcome field contained a free text description of the disposals. Occasionally idiosyncratic descriptions had been entered by police officers. Often the descriptions followed relatively similar formats. Recorded in this field too were those matters that had been diverted away from court, the type of diversionary procedure involved and often other details. Finally, the 'description' field included free text descriptions of the offence or offences that constituted each matter.

4.2 TRANSFORMATION OF THE TASMANIA POLICE DATA FOR STATISTICAL ANALYSIS

Together with a research assistant with expertise in information technology and database construction, over 60 hours were spent transforming the raw data received from Tasmania Police into a format suitable for statistical analysis. This task was completed with *Microsoft Access*, which could interpret the data extracted from *Crystal*. As noted, the raw data contained records up to the 30th of April 2002. The results below present the years 1991 to 2001. It was decided to define the years from the 1st of May to the 30th April. Thus, for example, the year 1991 actually contains data from 1/5/1991 to 30/4/1992. Likewise, the year 1999 contains data from 1/5/1999 to 30/4/2000.⁵⁸ Obviously then, '2000' refers to 1/5/2000 to 30/4/2001 and '2001' equates to 1/5/2001 to 30/4/2002.

For clarity's sake it is useful to mention here that regression analyses had been decided upon as a means of answering the key research questions (see 4.3 for rationale). Regression analyses would assess the trends in the years 1991-1999 and detect whether the outcomes of 2000-2001 – the period of the new system – departed from these trends to a significant degree. It was essential for this process that the two periods be tested on identical measures. This had a number of ramifications.

⁵⁸ There was one main reason for defining the years in this way. The new system began when the *Youth Justice Act 1997* (Tas) was proclaimed in February 2000. The three months of data in 2002 – that is, February 2002 to April 2002 – were considered very valuable for the data analysis. Defining years this way enabled the analysis to maximise the amount of data pertaining to the period of the new system.

First, the decision was made to exclude all data concerning offenders under the age of 10 and over the age of 17, which is the new age definition of a youth as provided in the *Youth Justice Act 1997* (Tas). Excluding all data not relating to offenders aged 10 to 17 reduced the data set from over one million records to about fifty thousand. The age of offenders was calculated at the date of the court disposal using the date of birth field together with the court date field. It was impossible to calculate the age of offenders at the date of the offence or offences concerned. The pre-2000 system defined youths as those aged seven to sixteen years inclusive (see 3.1.2). One minor effect of excluding offenders under the age of 10 years was the jettisoning of a small amount of data – 415 records in total – concerning offenders aged seven to nine who had contact with the pre-2000 system. More complicated were the consequences of including those aged 17 from the pre-2000 period. These offenders were processed through the justice system as adults – ineligible for diversionary procedures that existed at the time and sentenced by adult courts.

The second ramification of needing to compare the pre-2000 period and the post-2000 period on identical measures concerned the classification of offences eligible for diversion introduced by the *Youth Justice Act 1997* (Tas) (s. 3; see 3.3). Pre-2000 the police had a high degree of discretion as to the age of the offenders who could be diverted away from court as well as the types of offences that could be diverted. However, section 3 of the *Youth Justice Act 1997* (Tas) introduced a more specific categorization. Offenders aged 10 to 13 years can be diverted for all offences other than murder, manslaughter, and attempted murder. In addition to these ‘non-diversionable’ offences, youths aged 14 to 16 years cannot be diverted for aggravated sexual assault, rape, armed robbery, or aggravated armed robbery. This classification also applies to 17-year-olds except that they also cannot be diverted for traffic offences. The greatest concern of ignoring the difference between the two periods was that the levels of diversion in the post-2000 period would seem artificially low. That is, the results would not account for the fact that officers in the post-2000 period were unable to divert as many offenders as they had under the previous system. The main step taken to counter this problem was the exclusion of all traffic offences from the analysis. Traffic offences accounted for well over 20 per cent of the raw data on juveniles. However, the remaining seven ‘non-diversionable’ offences – murder through to aggravated armed robbery – were not deleted from the pre-2000 data because they constituted such a

small percentage (0.18%) of the raw data and would therefore have a negligible impact on the statistical findings.

Far more time consuming were the measures taken to deal with the introduction of 'global results' into the IBS as a means of recording court appearances involving multiple offences. Up until 1998 court appearances involving multiple offences had been recorded in a very simple way: one entry per offence. See for example Table 4.2, below.

Table 4.2 Example of the recording of court appearances involving multiple offences in the IBS pre-1998.

person_id	sex	dob	court_location	court_date	court_outcome	description
42	M	3/3/75	HOBART C.P.S	8/22/96	7 DAYS IMPRISONMENT WHOLL	BREACH OF BAIL
42	M	3/3/75	HOBART C.P.S	8/22/96	6 MONTHS IMPRISONMENT WHC	AGGRAVATED BURGLARY
42	M	3/3/75	HOBART C.P.S	8/22/96	6 MONTHS IMPRISONMENT WHC	STEALING
42	M	3/3/75	HOBART C.P.S	8/22/96	14 DAYS IMPRISONMENT WHOLI	BREACH OF BAIL CONDITIONS
42	M	3/3/75	HOBART C.P.S	8/22/96	14 DAYS IMPRISONMENT WHOLI	BREACH OF BAIL CONDITIONS
42	M	3/3/75	HOBART C.P.S	8/22/96	7 HOURS COMMUNITY SERVICE	STEALING
42	M	3/3/75	HOBART C.P.S	8/22/96	6 MONTHS IMPRISONMENT WHC	AGGRAVATED BURGLARY
42	M	3/3/75	HOBART C.P.S	8/22/96	6 MONTHS IMPRISONMENT WHC	STEALING

In this example one person was sentenced on the same day for eight different offences. The offences and the specific sentence that was applied to each offence were recorded individually. Thus, this data might be termed 'offence-centric'. After 1998 a new method of recording court appearances was introduced that changed the data dramatically. These are still used and are called global results. Global results are the entire sentence a person has received in one court appearance for multiple offences. See for example Table 4.3, below.

Table 4.3 Example of the recording of court appearances involving multiple offences in the IBS using global results.

person	sex	dob	court_location	court_date	court_outcome	description
485977	F	11/2/73	LAUNCESTON	4/28/99	4 MONTHS IMPRISONMENT WHOLLY SUSPE	STEALING
485977	F	11/2/73	LAUNCESTON	4/28/99	GLOBAL RESULT: REFER COMPLAINT 24102;	OBTAIN GOODS BY FALS
485977	F	11/2/73	LAUNCESTON	4/28/99	GLOBAL RESULT: REFER COMPLAINT 24102;	OBTAIN GOODS BY FALS
485977	F	11/2/73	LAUNCESTON	4/28/99	GLOBAL RESULT: REFER COMPLAINT 24102;	OBTAIN GOODS BY FALS
485977	F	11/2/73	LAUNCESTON	4/28/99	GLOBAL RESULT: REFER COMPLAINT 24102;	OBTAIN GOODS BY FALS
485977	F	11/2/73	LAUNCESTON	4/28/99	GLOBAL RESULT: REFER COMPLAINT 24102;	OBTAIN GOODS BY FALS
485977	F	11/2/73	LAUNCESTON	4/28/99	GLOBAL RESULT: REFER COMPLAINT 24102;	OBTAIN GOODS BY FALS

As Table 4.3 indicates, repetitions in the court outcome field simply state 'global result' and refer to a complaint code. Officers viewing the live IBS would be able to use this complaint code to track the actual sentence, which in the case above seems to be a wholly suspended sentence for four months. I was unable to do this without the

complaint codes or the live IBS. Effectively, the introduction of global results changed the IBS data from being ‘offence-centric’ to ‘matter-centric’. That is, making the court appearance – whether it dealt with one or multiple offences – the central unit.

To overcome the problem presented by the introduction of global results, steps were taken to transform all the data into a matter-centric format. All offences recorded with the same person ID and court date were grouped and only the *most serious* sentence was recorded. For example, where detention, monetary orders and an order for recorded conviction were imposed in one matter, only the detention was recorded. The sentences were categorized into a nine tiered hierarchy, ranging from most serious to least serious sentences. These categories combined sentences from the old system and the new system that were equivalent to each other (see 3.3 for a detailed comparison of the sentencing options under both systems). Table 4.4, below, shows the sentencing options under the old system and the new system and the terminology used in the analysis for this study.

Table 4.4 Categorisation of the sentencing options in the old and new systems for the present study

OLD SYSTEM	NEW SYSTEM	TERMINOLOGY FOR STUDY
Admonish and discharge	Dismiss and reprimand	Admonished and discharge
Good behaviour bonds	Good behaviour bonds	Good behaviour bonds
Conviction recorded	Conviction recorded	Conviction recorded
Fines & orders for restitution & compensation	Fines & orders for restitution & compensation	Monetary order
Licence disqualification	Licence disqualification	Licence disqualification
Supervision & probation orders	Probation orders	Supervision orders
Community service orders	Community service orders	Community service orders
Wardship	–	Wardship
Committal orders & Imprisonment	Detention orders & suspended detention orders	Detention

Wardship was a special case in that the new juvenile justice system removed wardship as

a sentencing tool. Licence disqualifications might appear to be a strange sentence category to record when all traffic offences were excluded from the analysis of 'diversionable' offences. However, licences can be disqualified for motor vehicle theft and indictable offences in addition to traffic offences. In fact, the court can order that a young offender be disqualified from driving before they have attained a driving licence. Sixteen is the age at which a driving license can be sought. An unlicensed 15 year-old who is found guilty of stealing a car might be prevented from seeking a driving license until they are 18 years of age.

4.3 RESEARCH QUESTIONS AND SUPPOSITIONS

Spanning state wide data on juveniles eight years before the introduction of the new system, the IBS data appeared well equipped to address the three key research questions concerning diversion, net-widening, and sentencing patterns. The most important research question concerned the diversion of minor juvenile offenders away from court into diversionary procedures. It was expected that the new juvenile justice system would succeed in this aim and that this would be measurable in three ways:

- there would be a significant *reduction* in the number of juvenile court appearances in the period 2000-2001 in comparison to the period 1991-1999,
- the 2000-2001 period would record a significant *reduction* in the courts' use of admonish and discharge orders – which Briscoe and Warner (1986) had found was the most common sentence for minor, first-time offenders,
- there would be a significant *increase* in the annual referral of youths to different diversionary practices in the 2000-2001 period.

The second research question concerned net-widening. It was anticipated that net-widening would occur in Tasmania's new system as it had in Western Australia over a ten year period. Specifically, it was expected that the number of youths having contact with Tasmania's juvenile justice system in the 2000-2001 period would be greater in than the 1991-1999 period.

The final question to be answered concerned the impact of the Tasmanian juvenile justice system on sentencing patterns. A decrease was expected in the use of admonish

and discharge orders, mentioned above. However, less certain were the hypotheses regarding other, more serious sentences. Cohen’s (1985) opinion that diversion, whilst benefiting minor offenders, results in harsher judicial treatment of repeat offenders seemed a useful thesis to test. Hence it was expected that there would be an increase in the use of the more serious sentences in the 2000-2001 period.

4.4 RESULTS

Modifying the raw data in the way explained yielded the number of juvenile court appearances for each of the years 1991 – 2001. Easily identified too were the annual totals of juveniles attending diversionary procedures, including cautions and conferences. Adding these yearly figures together provides the total number of recorded contacts between the criminal justice system and juveniles (see Table 4.5, below).

Table 4.5 Yearly totals (1991-2001) of juvenile court appearances, juvenile diversionary procedures and total juveniles dealt with by the criminal justice system.

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Court	2576	2307	2173	2030	1585	1613	1595	1318	1148	861	362
Diverted	109	245	363	207	684	628	648	1577	1436	1451	1545
TOTAL	2685	2552	2536	2237	2269	2241	2243	2895	2584	2312	1907

Most apparent is the steady reduction in the yearly figures of juvenile court appearances, over 2500 in 1991 down to 362 in 2001, which represents a 700% reduction. Not as dramatic, though equally apparent is the steady increase in the use of juvenile diversion over the course of the decade: 109 juveniles in 1991 and 1545 in 2001. We also notice two sudden increases in diversion in 1995 (n=684) and again in 1998 (n=1577). Overall, the total number of juveniles being processed by the justice system, either through the courts or through a diversionary procedure, fluctuates but does not reveal a consistent trend over the ten year period.

The basic data concerning sentences is also interesting. Table 4.6, below, presents the annual figures for the nine sentence categories developed for the study.

Table 4.6 Yearly figures (1991-2001) of juvenile court sentences.

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Detention	88	76	78	97	108	111	119	139	146	205	109
Wardship	35	18	12	10	7	17	10	11	7	0	0
Community Service Order	135	124	109	140	107	114	98	108	55	46	28
Supervision Order	482	369	253	237	245	240	236	182	177	174	43
Licence Disqualified	74	41	50	44	50	59	33	29	32	54	10
Monetary Order	732	665	661	662	540	492	511	487	451	257	123
Recorded Conviction	35	29	22	25	31	25	32	44	30	14	10
Good Behaviour Bond	101	115	161	193	168	184	190	102	113	101	34
Admonished and Discharged	894	870	827	622	329	371	366	216	137	10	5
TOTAL COURT	2576	2307	2173	2030	1585	1613	1595	1318	1148	861	362

Most notable is the change in the use of an admonish and discharge as a means of disposal. In 1991 2576 juveniles appeared before the courts (see Table 4.5). Table 4.6 indicates that one third of these appearances in 1991 were disposed of by way of an admonish and discharge ($n=894$). Yet, by 2001 the courts have almost ceased to use admonish and discharge orders as a sentencing tool. Of the 362 court appearances in 2001 only five juveniles were dealt with in this way. Obviously 2000, the year that the *Youth Justice Act 1997* (Tas) was proclaimed, saw a quite distinct drop from 137 to 10 cases involving admonish and discharge orders. Interesting also is the 50% reduction in disposals involving admonish and discharge orders from 1993 to 1995.

Whilst the least serious sentence, admonish and discharge, dropped over the decade, the most serious disposal – detention – displayed an upward trend. Small but steady increases in detentions are apparent from 1993 ($n=78$) to 1999 ($n=146$). A sudden

increase in the use of detention took place in 2000 ($n=205$).⁵⁹ However, this was followed by an even greater fluctuation in 2001 when the number of detentions halved ($n=109$). This figure seems comparable to the use of detention in the 1994 ($n=97$) to 1998 period ($n=139$). A 'floor' of some kind may exist in the Tasmanian system, meaning that a certain minimum number of sentences are likely to involve detention each year.

Decremental trends are apparent for all other sentence categories across the decade. Steep reductions also occurred from 2000 to 2001 in the courts' use of supervision orders (75%), licence disqualifications (80%), monetary orders (55%), and good behaviour bonds (65%). It should be kept in mind though that juvenile court appearances also decreased over 50% in this period (2000-2001).

4.4.1 Regression analyses

Regression analyses were performed on the frequencies of court appearances and diversions shown in Table 4.5 and the rates of admonish and discharge orders recorded in Table 4.6. As noted, this statistical method calculates the predicted upper and lower limits within which an observation is expected to fall on the basis of a linear trend in the data. Data that subsequently fall outside the predicted course – the upper or lower confidence intervals – of a trend suggests that some external factor has impacted upon the variable concerned. Imagine the records of a hypothetical company in the 1980s. Whilst its profits fluctuated they steadily climbed from \$1,000,000 in 1980, to \$3,000,000 in 1986, and then fell to \$750,000 in 1987. Regression analysis could be used to assess the company's profit trends from 1980-1986. The analysis might have shown that had the trend from 1980-1986 continued the predicted profit for 1987 should have lain somewhere between \$3,400,000 (the upper confidence interval) and \$2,800,000 (the lower confidence interval). Anything above the upper confidence interval or below the lower confidence interval is statistically different from the course of the trend in 1980-1986. Clearly the actual figure for 1987 fell way below the lower confidence interval. Therefore the regression analysis would indicate that the 1987 figure of \$750,000 was not

⁵⁹ These figures are comparable to completely different data gathered by the Australian Institute of Criminology (AIC). The AIC collated quarterly figures of youths in Tasmania's juvenile detention centre from 1994 to 2001. The year 2000 contained the two highest quarterly figures across the eight years analysed (Cahill & Marshall, 2002: 17). Care must be taken in comparing the figures from this study with those from the AIC. The figures presented in Table 4.6 relate to numbers of youth matters appearing before the courts. The AIC data concerns youths in detention.

due to normal fluctuations that the company had experienced previously. Something else affected the company in 1987 – probably the stock market crash.

Regression analysis was adopted as the simplest and most direct method of determining whether there is an increasing or decreasing linear trend in the data, and for determining upper and lower limits for subsequent predicted values in accordance with the observed trend (Howell, 2002; Studenmund, 2001). While regression analysis provides an accurate description of trends in the data it does not take account of more complex dependencies from one observation period to the next. Time series analysis, used in economic modelling, provides a more comprehensive analysis but also requires many more observation periods. In the present data trends are based on nine observation periods, representing the years 1991 to 1999. The trends are then used to forecast results for 2000 and 2001. Because the possibility of serial dependency cannot be excluded the upper and lower confidence limits should be regarded as approximate or indicative.

Confidence intervals were calculated for both 2000 and 2001. Table 4.7 presents the results of the regression analyses – the forecasted upper and lower confidence intervals for 2000 and 2001 as well as the actual values for those years.

Table 4.7 Upper and lower confidence intervals for 2000 and 2001: juvenile court appearances, admonish and discharge orders, diversions, and total juvenile cases.

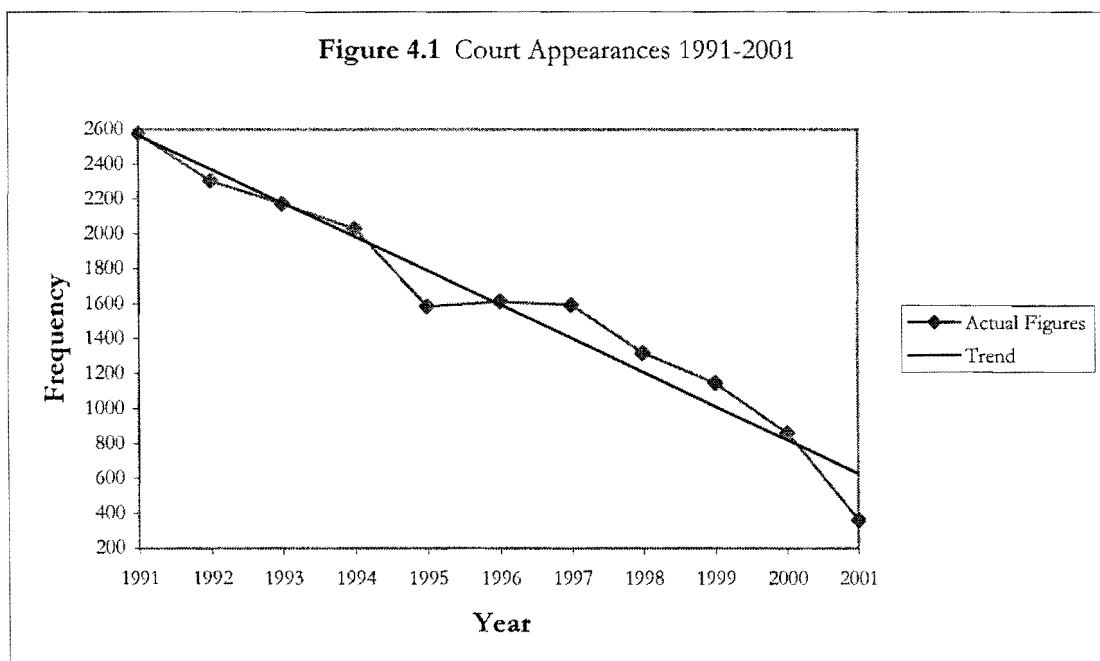
	2000		
	Lower confidence interval 2000	Upper confidence interval 2000	Actual 2000
Juvenile court appearances	654	1270	861
Admonish and discharge	-259	261	10
Diverted	774	2252	1451
TOTAL JUVENILE CASES	1734	3216	2312

2001			
	Lower confidence interval 2001	Upper confidence interval 2001	Actual 2001
Juvenile court appearances	465	1117	362
Admonish and discharge	-376	173	5
Diverted	903	2467	1545
TOAL JUVENILE CASES	1692	3260	1902

4.4.1.1 Juvenile court appearances

Table 4.7 indicates that a statistically significant reduction in the number of juvenile court appearances occurred in 2001. The 2000 figure of 861 juvenile court appearances was safely within the confidence intervals forecast from the trend in 1991-1999. However, in 2001 only 362 youths were directed to court and this falls below the predicted lower confidence interval for that year of 465. This indicates that the departure from the trend in the number of court appearances for 2001 is statistically significant and that the drop was not attributable to chance fluctuations. That is, the factors influencing the juvenile court appearances for 1991 to 2000 changed in 2001.

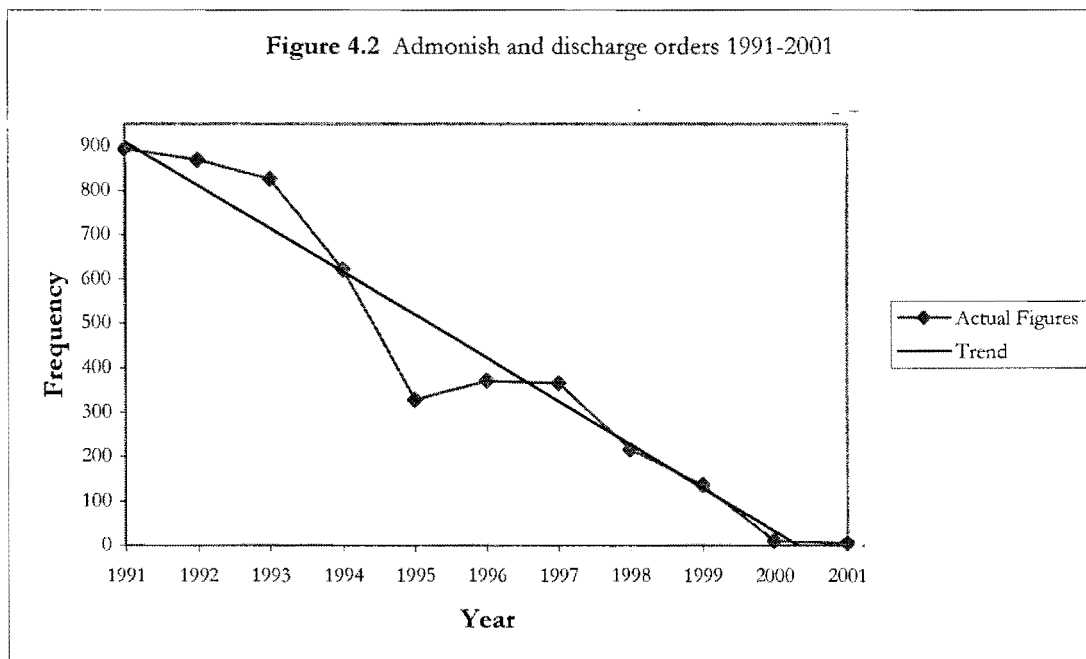
Figure 4.1 provides a more complete picture of youth court appearances indicating a very steady decrease through the 1990s.



The substantial downward slope presented in Figure 4.1 is highly statistically significant ($t(7) = -12.55, p < 0.001$). The slope represents an annual reduction of 171 juvenile court appearances. That the 2001 figure fell below the confidence interval is indicative of an even greater impetus within the system to reduce juvenile court appearances.

4.4.1.2 Admonish and discharge orders

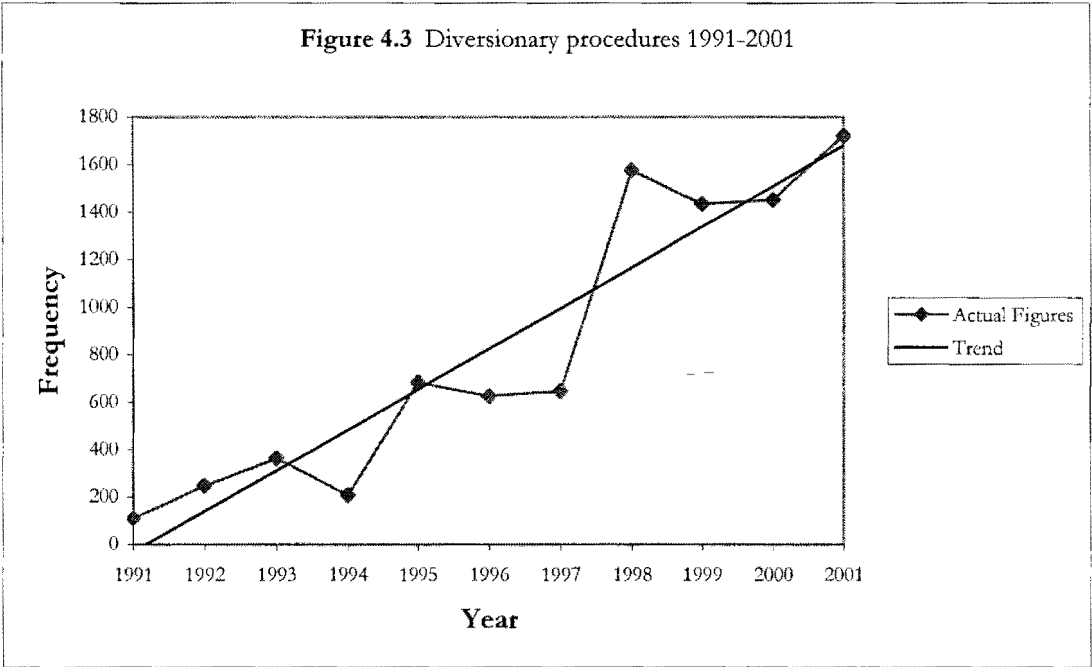
The findings concerning the use of admonish and discharge orders are presented here because of their implications for diversion. Results describing the trends of all other sentences are presented in section 4.3.1.5, below. The number of admonish and discharge orders for 2000 and 2001 were not significantly different from the prediction derived from the regression analysis – Table 4.7, above, reveals that the figures for those years lay within the confidence intervals. However, Figure 4.2, below, clearly indicates that the number of admonish and discharge orders steadily reduced over the ten years analysed, almost to the point of extinction.



The clear downward trend presented in Figure 4.2 is itself highly statistically significant ($t(7) = -8.96, p < 0.001$) – the slope representing a reduction of over 100 matters annually disposed of by way of an admonish and discharge.

4.4.1.3 Diversionary procedures

During the same period, 1991-2001, when juvenile court appearances were annually shrinking in number – especially it seems those appearances which might have resulted in the use of an admonish and discharge order – the police began diverting youths to different types of diversionary procedures. Though the first two years of the new Tasmanian juvenile justice system recorded increases in the numbers of youths being diverted away from court, Table 4.7 indicates that the figures for 2000 and 2001 were not higher than might have been expected by the trend of the preceding years. Nevertheless, once again a substantial and significant trend ($t(7) = 5.26, p = 0.0012$) was found from 1991-2001 and this is presented in Figure 4.3.



The upward slope in fact represents a yearly increase of 172 juveniles processed by means of diversion – almost the exact figure of the annual *reductions* in court appearances for juveniles across the same period. The results clearly indicate that rates of diversion grew as juvenile court appearances fell.

This is an appropriate juncture to describe what the IBS reveals about the use of diversionary procedures by the police in 1991-2001. The first important thing to note is that informal cautions have never been systematically recorded across the state and they do not appear in the data. This represents an important ‘hole’ in the results and is discussed later in reference to net-widening. Chapter three outlined how the police

utilized diversionary procedures during the 1990s (3.2). Very many terms were used in the IBS to record diversionary procedures. These can be separated into five categories, as presented below in Table 4.8. A format of cautioning had been used for some time, predating the IBS, which involved police inspectors. These diversionary practices were not given a consistent term when recorded in the IBS from 1991. Consequently, the first category, below, includes a variety of terms that were used to describe ‘cautions’, including ‘diversionary cautions’, ‘police cautions’ and so on. The second category includes all procedures recorded as ‘police conferences’. These were introduced in late 1995 by one senior constable. The third category includes all those procedures that were specifically recorded as ‘formal cautions’. As chapter three explained, the technical term ‘formal caution’ encompasses both police conferences and formalised cautions. Community conferences and cannabis cautioning program procedures constitute the fourth and fifth categories.

Table 4.8 Numbers of juveniles processed by different means of diversion, 1991–2001.

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Various terms for old-style cautions	109	245	363	207	628	516	79	22	15	1	0
Police Conferences	0	0	0	0	56	110	82	300	139	0	0
Formal Cautions	0	0	0	0	0	2	487	1216	1158	1076	1192
Community Conferences	0	0	0	0	0	0	0	1	40	246	210
Cannabis Cautioning Program	0	0	0	0	0	0	0	38	84	128	143
TOTAL DIVERTED	109	245	363	207	684	628	648	1577	1436	1451	1545

There are several interesting features of Table 4.8. The first is that the numbers of cautions in 1991 were minimal. These cautions, as chapter three described (3.2), were permitted under the Police Commissioner’s *Standing Orders* (Warner, 1992). A noticeable increase in cautions took place in 1995. In this year the first use of the term ‘police conference’ appeared. The following year when the *Youth Justice Act 1997* (Gas) was passed, the use of police conferences increased and the term ‘formal caution’ appeared, despite the fact that the legislation had not yet been proclaimed. Interestingly, it was

only in 2002 that the Police Commissioner's *Instructions and Guidelines* specifically required officers to use the term 'formal caution'. Clearly anticipating the introduction of the new system, the police tripled the number of diversions to formal cautions in 1998 and these levels were maintained through to 2001. By 2000 the use of other terms for cautions all but disappeared. Noticeably, 'police conferences' were still recorded even into the first year of the new juvenile justice system. Forty community conferences took place in the year '1999'. Reference to the raw data indicates that these were held in the months February to April 2000 (see 4.2 on the parameters of the years presented in the results) . This increased to over 200 diversions in 2001. Finally, the cannabis cautioning program (hereinafter cannabis cautions) began in 1999 and grew slightly in 2001.

Looking at the first two years of the new system specifically it is clear that forms of police diversion (namely formal cautions and cannabis cautions) account for the majority of official juvenile contacts with the criminal justice system. Figure 4.4, below, presents the percentages of juveniles attending court and different diversion programs in 2000 and 2001.

Figure 4.4 Percentages of juvenile court appearances, formal cautions, cannabis cautions, and community conferences in 2000 and 2001.

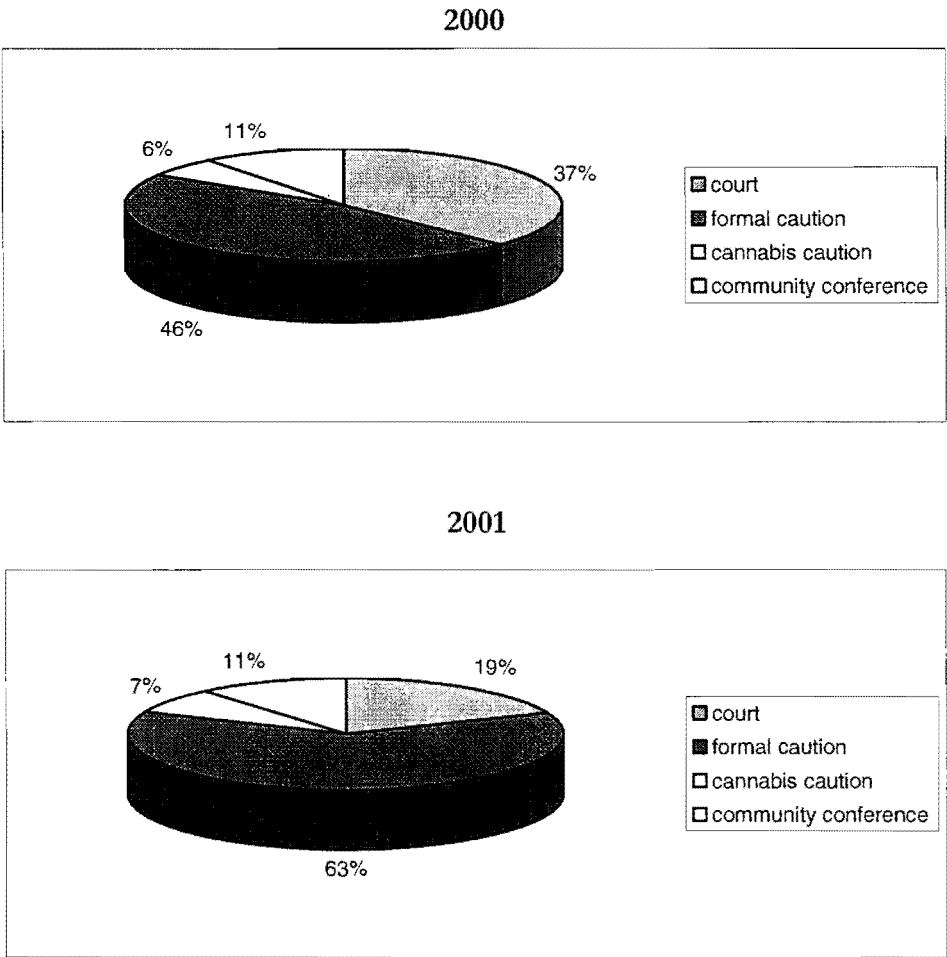
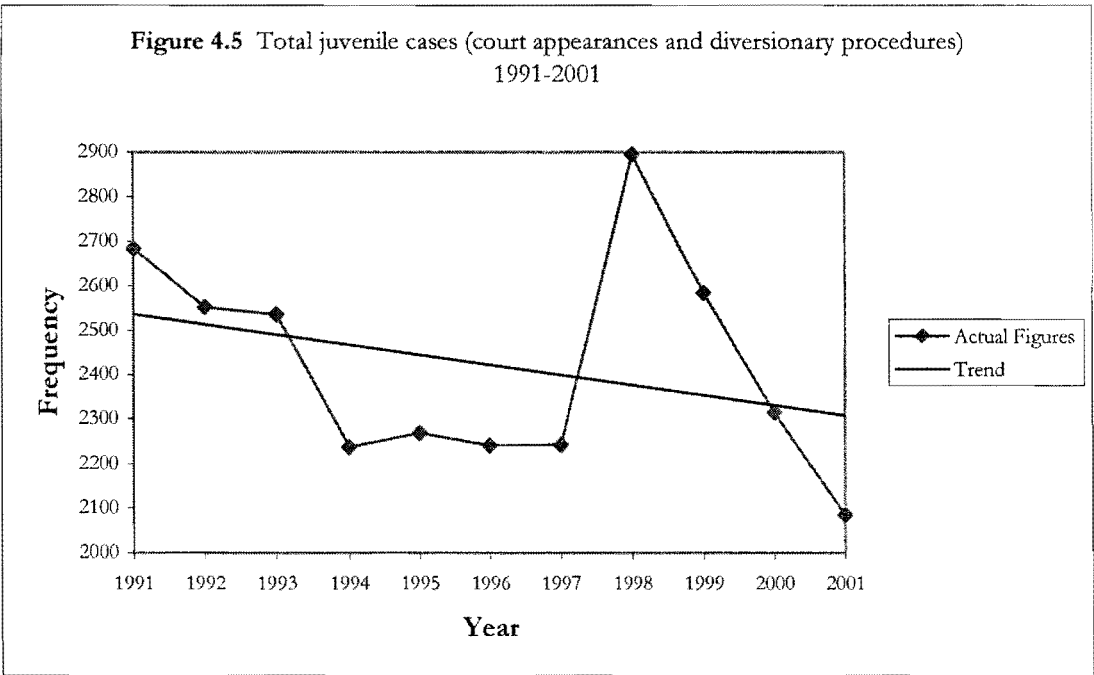


Figure 4.4 indicates that approximately 10% of juvenile cases are dealt with by way of a community conference in both years. The reduction of juvenile court appearances to less than 20% in 2002 corresponded with an increase in formal cautions. In 2001 formal cautions and cannabis cautions together account for 70% of juvenile cases, increasing from 50% in the previous year.

4.4.1.4 Total juvenile cases

Reference to Table 4.7, above, reveals that in 2000 and 2001 the numbers of juveniles that had some type of official contact with the criminal justice system – be it a court appearance or some form of diversionary procedure – in no significant way differed from the trends of the 1991-1999 period. That is, the actual values for 2000 and 2001 were within the confidence intervals for the values predicted by the linear regression. Figure

4.5 provides more detail on the frequencies of juvenile cases across the decade.



The slope illustrated in Figure 4.5 for the years 1991 to 2001 shows a slight downward trend but is not statistically significant ($t(9) = 0.98, p = 0.35$). Thus, the rates of juvenile cases have declined slightly over the ten year period encompassing the introduction of the diversionary schemes. However, quite noticeable are the fluctuations in the observed yearly figures. It is tentatively suggested that the rates of juvenile cases in 1994 to 1997, together with the substantial downward trend from 1998 to 2001 indicate that the system may stabilise at a lower level. That is, in the coming years the average number of juvenile cases may be significantly lower than the average recorded in the 1990s.

4.5 DISCUSSION

The results presented in this chapter are surprising. Plainly evident is an acceptance of – and indeed an early implementation of – some of the central objectives of the *Youth Justice Act 1997* (Tas) in the early 1990s, before the legislation was passed. How are the many findings to be interpreted collectively? Perhaps this is best achieved through referral to the research questions described in section 4.3.

4.5.1 *Diversion and gate-keeping*

Three differences were anticipated between the 1991-1999 period and the 2000-2001 period. These were that, because of the introduction of the new system in 2000, in the 2000-2001 period there would be (a) a downturn in the number of juvenile court appearances, (b) a downturn in the number of admonish and discharge orders, and (c) an upturn in the number of juveniles directed away from court into diversionary procedures. There was a reduction in the number of juvenile court appearances in the period of the new system (2000-2001). Importantly, this reduction was statistically significant in the second year, 2001. This significant difference could be attributed to the proclamation of the *Youth Justices Act 1997* (Tas) and the implementation of the new juvenile justice system. However, the introduction of the new system did not result in a significant reduction of the use of admonish and discharge orders by the courts. Neither was there a statistically significant increase in the number of juvenile diversions.

Nevertheless, a clear picture emerges from the graphs of juvenile court appearances, admonish and discharges, and referral to diversionary procedures. Statistically significant and substantial trends were found for all three variables. Juvenile court appearances steadily declined throughout the ten year period analysed by the data. Arguably the majority of youths who were being directed away from court were those who the police considered to be minor or petty offenders. This view is supported by the fact that the simplest disposal available to the courts, admonish and discharge orders, were used with decreasing frequency through the 1990s. Further, juvenile court appearances and admonish and discharge orders declined at a similar rate: 170 per year and 103 per year respectively. It seems that the decline in juvenile court appearances was partly due to the referral of offenders to diversionary procedures instead of court. Diversionary procedures increased at a rate of 172 cases per year from 1991 to 2001 – almost exactly the same rate at which juvenile court appearances declined. Therefore, rather than changes occurring in the 2000-2001 period, as was expected, it seems that diversion was already occurring in earnest before the passing of the *Youth Justice Act 1997* (Tas). After the Act was passed but before it was proclaimed, the rates of diversion increased suggesting that the police acted in full anticipation of the new system's implementation in 2000. Consequently, the introduction of the new juvenile justice system appears to have merely continued pre-existing trends regarding the diversion of especially minor

offenders away from court. However, in 2001 there was an accelerated decrease in juvenile court appearances and this seems to have been the direct result of the new legislation.

Chapter three outlined the history of juvenile justice in Australia with a special emphasis on innovations in Tasmania in recent decades. Diversionary practices, which had been trialed in various formats including panels and cautions, were not foreign to the police in Tasmania (Seymour, 1988). Although police officers were able to conduct formal cautions in the early 1990s under the Police Commissioner's *Standing Orders*, chapter three suggested that police interest in diversion really began to increase from 1995, mainly through the influence of one senior constable, John Lennox. Himself influenced by one of the original operators of Wagga style conferencing in the New South Wales police, Lennox promoted police conferencing.

With the backing of the Commissioner for Tasmania Police, Lennox encouraged both police conferencing and cautioning. A memo from the Commissioner indicates that by 1998 police policy embraced diversion for juveniles and police conferencing in particular as a form of restorative justice. What might be described as eagerness to implement the system contained in the *Youth Justice Act* 1997 (Tas) is evidenced by the immediate adoption of the term 'formal caution' in 1996 (see Table 4.8, above). From 1997 onwards the bulk of police cautions were recorded as such. More telling is the two-fold increase in cautions and conferences in 1998 ($n=1577$). The levels of diversion reached in 1999 were maintained in 1999, 2000, and 2001 (see Table 4.8).

These lines of thought lead to the conclusion that the *culture* of the Tasmanian juvenile justice system changed dramatically through the 1990s. Importantly, the key stakeholders had been involved in discussions about reform in the juvenile justice sector since the mid 1980s and legislative changes had been anticipated even in 1987 (see Briscoe & Warner, 1986). The welfare departments had been pivotal in reducing the number of youths sent to detention centres, so that by the beginning of the 1990s two of the three centres closed down. Additionally, in agreements with magistrates welfare professionals began limiting their discretionary power over juvenile offenders (see 3.2). What the results presented in this chapter emphasise is that the police perspective also changed in a very significant way in the last decade. Beginning with, *inter alia*, disillusionment with the

court system, the tenor of the later part of the 1990s was one of confidence in the purpose of diversion. In the police force a firm attraction to juvenile conferencing and restorative justice developed among key figures of different ranks. Heavy involvement of the welfare sector and the police characterised the formation of the *Youth Justice Bill*. The *Youth Justice Act 1997* (Tas) was passed in 1997 but in the three years it took to proclaim the legislation the police began practising their gate-keeping role in full anticipation of the new system.

The results in this chapter also indicate that the Tasmanian police have performed very well in exercising their gate-keeping role. In the 2001 period the police sent just 19% of young offenders to court. In comparison, one year after the South Australian diversionary system began the police in that state sent 33% of juvenile cases to court (Wundersitz, 1996a). After the New South Wales diversionary system had been operating for three years the police were still directing 70% of juveniles to court (Power, 2000). The rates of diversion in Tasmania are comparable to those achieved in Western Australia after six years of operation, where just over 23% of young offenders were sent to court (Ferrante et al., 2000). However, it is not clear to what extent the diversion rates in Western Australia can be attributed to the police. This is because the Western Australian gate-keeping role is shared between the police and public prosecutor. In 1993 when the New Zealand system, like Tasmania's system currently, was a few years old, only 10.3% of juveniles were referred to court. Obviously, though, one of the distinguishing features of the system in New Zealand is the mandatory gate-keeping process that does not involve the police at all.

It is also encouraging to note that as gate-keepers the Tasmanian police have not been reluctant to refer juvenile cases to community conferences; 11% of juveniles are dealt with this way. This is comparable to the number of juveniles diverted to conferences by the South Australian police force (10%). In contrast, in 1997 the New South Wales police diverted only 3% of juveniles to conferences, which was interpreted as antipathy towards the conferencing process as a 'soft option' (Sarre, 1999: 246; Power, 2000).

What my analysis of the IBS was unable to ascertain is whether the Tasmanian police are biased – unintentionally or intentionally – towards any particular groups or minorities in the way they exercise their gate-keeping role. This has been a major fear of a number

of commentators (Blagg & Wilkie, 1997; Sandor, 1993, 1994). It is imperative that future research on the Tasmanian juvenile justice system investigates whether there are any differences between the way in which the new system treats juveniles depending on their (a) socio-economic background, (b) sex, and (c) cultural background.

4.5.2 *Net-widening*

Of course, as mentioned at the introduction to this chapter, the success of a diversion scheme in diverting a large numbers of youths away from court can be heavily qualified by evidence of net-widening. It was anticipated that that net-widening would occur with the introduction of the new system in Tasmania. In particular, it was expected that there would be a statistically significant increase in the total number of youth cases – court and diversion combined – in the 2000 to 2001 period. (Each one of the youth cases, it is worth remembering, does not represent a young person, but a ‘matter’. A matter may be one offence or several offences for which a youth is sent to court or dealt with by way of a formal caution or community conference.)

However, no significant increase in the number of youth matters was evident in the 2000 to 2001 period. Instead, quite an interesting pattern appeared across the entire decade of 1991 to 2001. That is, rates of diversion appeared to increase at the same rate that juvenile court appearances decreased – meaning that the total number of juvenile cases remained stable. But before this outcome can be reasonably accepted as evidence that net-widening has not occurred with the introduction of diversion in Tasmania, the question of population stability has to be addressed.

Tasmania has a small island population of less than half a million people. Particularly during the late 1990s its population had been slowly declining.⁶⁰ The rate of decline has been most apparent in the age bracket of 18 to 38 years (Jackson & Kippen, 2001). However, the number of juveniles in Tasmania has been decreasing as well. Figures suggest that from 1991 to 2001 the number of youths aged 12 to 14 years declined 3.4% (n=719) in this period. Additionally, in this decade the number of 15 to 19 year olds declined 5% (n=1754) (Fraser & Fraser, 2003). In total, from 1991 to 2001, 2473 people aged between 12 to 19 years left Tasmania.

⁶⁰ This is principally because the number of people leaving the state is greater than (a) the number of births and (b) the number of people arriving to settle here (Jackson & Kippen, 2001).

Obviously a very well designed study would need to be conducted to determine whether a decline of this size would actually affect the rates of juvenile crime. Theoretically at least, all other factors unchanging, if the 3-5% of juveniles who left the state came from a cross-section of Tasmanian society, a 3-5% reduction in the number of juvenile cases might appear over time. A reduction of 5% of juvenile cases would equate to between 110 and 145 cases for any given year. The first point to make about this is that the results clearly indicated that the number of juvenile cases fluctuates considerably some years. For instance, Table 4.5 indicated that in 1998 there was an increase of 653 cases, followed by a 311 reduction in 1999. Amongst other things, this means that a 5% reduction might be difficult to detect statistically over a ten year period.

Notwithstanding, it was noted above that there might be indications that the total number of youth cases dealt with *is reducing*. This tentative suggestion was based upon the low rates of juvenile cases in 1994 to 1997, together with the substantial downward trend from 1998 to 2001. If indeed the system stabilises at a lower level of annual juvenile cases this may be partly attributable to the decreasing juvenile population.

However, what if the reduction in the juvenile population somehow caused a reduction in crime much greater than 5%? A possible cause for the first scenario might be that for some reason the 3-5% of juveniles that left the state happened to include very many serious recidivists.⁶¹ And with their departure the frequency of juvenile crime fell significantly – that is, much more than 5%. This would have very important implications for the way in which the data in this study would be interpreted. It would mean that the levels of state intervention in the lives of young offenders had remained stable when the frequency of juvenile crime had dropped. That is, the justice system would have increased the *proportion* of young Tasmanian's with which it deals. If this were true then the findings of this study could be interpreted to suggest that net-widening *had occurred* in the juvenile justice system.

It is argued that this dynamic is unlikely. In fact, if anything there are reasons to believe that this cohort of youths would contain a lower than average number of recidivists. The youths leaving the state probably do not come from a cross section of Tasmanian

⁶¹ Studies suggests that a small number of juvenile offenders, less than 5%, are repeat offenders. This group can account for up to 60% of crimes committed by juveniles (Cunneen & White, 2002; Wundersitz, 1996b).

society. Rather, it is clear that attraction to interstate employment opportunities is a driving factor behind Tasmania's declining population (Jackson & Kippen, 2001). Hence, probably the majority of youths leaving the state belong to families which have the financial flexibility to uproot themselves and relocate for better employment conditions. As discussed in chapter seven, youth crime is correlated with social disadvantage in families: poverty and unemployment in particular (Gale et al., 1993; Cunneen & White, 2002; Braithwaite, 1989). These factors are also correlated with recidivism amongst youths (Gale et al., 1993; Morris & Maxwell, 1997).

Future research may wish to analyse the relationship between juvenile crime and the number of juveniles leaving the state. It is unclear how population decrease may have affected the data on the number of juvenile cases from 1992 to 2002. There is a possibility that the population decrease is reflected in the results, namely in the low figures recorded for 1994-1997 and 2000-2001. However, it is confidently argued that it is unlikely that juvenile population decrease is in someway disguising the occurrence of net-widening in Tasmania.

The finding that net-widening does not appear to have occurred in Tasmania is a positive one. Enthusiasm for diversion amongst the police might have prompted them to send to diversionary processes those matters which previously they would have dealt with informally, thereby widening the net of social control (Polk, 1994). These results should be of interest to other Australian jurisdictions and even the expanding police diversionary systems in the United Kingdom and Ireland. This is because it is an indication that net-widening is not an axiomatic characteristic of diversion to conferencing programs, even diversion schemes fed by police gate-keepers. Wundersitz (1996a) and Power's (2000) reviews of South Australia indicated that the police gate-keepers in that state had not engaged in practices which caused net-widening. However, arguably the present study provides clearer evidence than either of these studies for two reasons. First, the results from the IBS are more comprehensive mainly because a far greater time period was analysed to evaluate whether net-widening was occurring in the Tasmanian system – 11 years in total. This counters problems associated with small trends spanning a year or two. In comparison, Wundersitz (1996a) compared the period 1992-1993 with the period 1994-1995, whilst Power (2000) concentrated on the years 1994 to 1998. Secondly, unlike Power's (2000) data the present analysis drew on a single source of

information, the IBS. This avoids complexities concerning the way in which different government agencies chose to extract data. That is, the data used in my analysis are likely to be more consistent than Power's (2000).

However, three important caveats must be placed on these results. First, as Wundersitz (1996a) noted in her own study in South Australia, there is no data available on the use of informal cautioning across Tasmania. Chapter three explained that informal cautions are typically those given on-the-spot by police officers and do not take place at police stations or involve victims as do formal cautions. It is reasonable to question whether the police enthusiasm for formal cautioning and community conferencing may also encompass an enthusiasm for informal cautioning. Perhaps Tasmanian police now issue informal cautions for juvenile behaviour that they might have ignored previously? If the frequency of informal cautions was added to formal cautions, conferences, and court appearances it might indicate that net-widening had actually taken place. How future research will measure informal cautioning is problematic.

The second caveat is that, as noted in chapter two, net-widening includes 'wider, stronger, and different nets' (Austin & Krisberg, 1981: 165). Arguably the new system deals with young offenders in a more intense way than before. That is, under the old system the majority of youths were dealt with by way of short court appearances. Most involved an admonish and discharge. In 2001 63% of youths were 'formally cautioned'. The practices observed in this study suggest that most of these 'formal cautions' were actually police conferences lasting about one hour, often involving the victim as well as the offender in intense discussions. A further 11% of juveniles passed through community conferences. Is this more intense processing bad for minor, first time offenders? Many restorative justice advocates would say not; the youths avoid the stigma of court proceedings and gain self-esteem through taking responsibility for their actions (Braithwaite, 1999). Victims benefit also. Notwithstanding, a simple appraisal of the new system would state that with the increased length and intensity of intervention by the criminal justice system the nets of social control have been deepened. Furthermore, the benefits highlighted by restorativists are dependent upon good practice in 'formal cautions' (police conferences) and community conferences. Chapter six will outline two instances from the observation of police conferences that involved very poor practice;

one of these degenerated into shouting between the main participants and ended with the victim crying.

Finally, there are important economic implications in the use of more 'intense' nets. Several studies have suggested that the bulk of juvenile offenders who are apprehended by the justice system appear in official records only once (Wundersitz, 1996b). Self report studies indicate that most of these youths simply grow out of criminal behaviour (Cunneen & White, 2002). Given this, does it make economic sense to deal with so many youths by way of an hour long formal caution/police conference?

4.5.3 Sentencing trends

The sixth, rather broad supposition suggested that with the introduction of the new juvenile justice system there would be an increase in the severity of the sentences. This was based on Cohen's (1985) view that the courts tended to treat juveniles more harshly when a diversion scheme was introduced – mainly because they perceived those juvenile who had not been fit for diversion negatively. The results did not indicate that the Tasmanian magistrates treated youths more harshly with the introduction of diversion. In fact, there seemed to be an overall decrease in the use of supervision orders and licence disqualifications, even accounting for the dramatic reductions in the numbers of youth appearances. Sentences involving a period of detention showed an upward trend in 1998 to 1999, and rose very sharply in 2000. This was followed by an even sharper downward trend in 2001 back to levels similar to 1995. It is difficult to interpret what caused these fluctuations. Re-assessing the frequency of sentences involving detention in two or three year's time will be an important goal. At least for now there are no clear signs of more punitive sentencing patterns emerging in the youth courts.

CHAPTER FIVE

RECRUITMENT, TRAINING, AND MONITORING OF POLICE AND DHHS FACILITATORS

This chapter analyses the current procedures within Tasmania Police and the Department of Health and Human Services (DHHS) for recruiting, training, and monitoring facilitators. Chapter five adds an important dimension to the analysis that this thesis makes of the Tasmanian system. Indeed, criticism has been levelled at several studies for failing to describe information on facilitators' backgrounds and the training provided for facilitators (Latimer et al., 2001).⁶² Many of the issues raised in this chapter are important for chapter six. Together, the two chapters explore the relationship between practice standards and recruitment, training, and monitoring – themes widely relevant to conferencing systems and restorative justice.

The importance of training and monitoring restorative practitioners is receiving increased attention in the restorative justice literature (Van Ness, 2003). This study suggests that the issues of recruitment, training, and monitoring are intertwined. Recruitment influences the effectiveness of training. Training certainly affects the frequency with which monitoring is required. Monitoring in turn is an acid test of whether an individual has the skill to facilitate conferences. Monitoring can also identify weaknesses in the training program. It is emphasized that willingness – or even enthusiasm – to become a facilitator is not enough; evidence strongly suggests that some individuals simply do not make good facilitators (McCold & Wachtel, 1998; Hoyle et al., 2002; Braithwaite, J. & Braithwaite, V., 2001). However, being forced or required to facilitate conferences, as are some police officers, is a recipe for disaster. The findings suggest that the training provided by both departments, particularly the DHHS, is inadequate. Compulsory refresher or 'top-up' training is non-existent. But in many ways the most serious implications arise from the lack of systemic monitoring of facilitators within Tasmania Police. Without at least periodic monitoring, facilitators cannot receive feedback to

⁶² Latimer et al.'s (2001) review of 22 studies on restorative practices in North America concluded that this missing information was essential to give a proper context for findings on practice standards.

improve or maintain their skills. In the worst-case scenarios, idiosyncratic practices develop which no longer can be described as restorative.

This chapter is based upon reviews of departmental policies, personal interviews with 27 facilitators and 8 key figures in the two agencies, and 22 hours of observation of facilitator training. A valuable source for the discussion of training is an outline of the internationally recognised course offered by Transformative Justice Australia (Moore & McDonald, 2000) together with descriptions of practices in other jurisdictions. Drawn upon also are the qualitative observations of 67 conferences.⁶³

As explained in chapter three the majority of officers conducting ‘formal cautions’ in the south and east of Tasmania are actually facilitating police conferences. As this chapter highlights, police officers are trained as ‘facilitators’. The extent to which formal cautions are run as police conferences in the north and northwest of Tasmania is uncertain. However, the practices in the south and east are clearly a blueprint for police operations statewide. For this reason the discussion refers to ‘police conferences’ and ‘police facilitators’.

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This chapter has a simple structure. The first section discusses the recruitment of facilitators by the police and DHHS. The second section focuses on the training provided by both agencies. Each training program is analysed in terms of its theoretical content and practical content. The third and final section critiques current monitoring systems.

5.1 RECRUITMENT

A fundamental difference exists between the way in which individuals are recruited to become facilitators by Tasmania Police and the DHHS. In many instances officers are not volunteers but are persuaded, or even coerced, to become facilitators. Those who choose to be trained as facilitators for the DHHS, on the other hand, have voluntarily applied for employment as such and have been successful in their applications.

Voluntariness, it will be argued, is a vital factor in the shaping of adequately skilled

⁶³ As noted in the introduction to this thesis, six conferences were observed prior to developing the methodology and the questionnaires. 61 conferences were observed using the questionnaires.

facilitators. However, neither Tasmania Police nor the DHHS require that their facilitators successfully complete their facilitator training courses before they can practice, which has its own implications.

There has been a high demand for police officers to be trained to become authorized officers for the purposes of the *Youth Justice Act 1997* (Tas) (s 3).⁶⁴ Once authorized, officers are permitted by legislation to conduct formal cautions. This also permits them to represent the Commissioner for Police at community conferences, which is an important role. With a considerable need for authorized officers, the police force has not been able to wait for volunteers to step forward. Rather, according to unofficial estimates approximately 30% of the 178 authorized officers statewide were asked or required to do the training. A further 60% did the training because it was necessary for their position, such as lone officers in small country towns. Only 10% of officers did the training because of personal interest (Lennox, pers. comm., 7/1/2003). Admittedly, the 10% of interested officers are the most active in terms of the numbers of 'formal cautions' that they process – up to 30 each year. However, many officers in the other categories still complete five to ten formal cautions per year (Lennox, pers. comm., 7/1/2003).

However, it is not 'formal cautions' – as the term is understood nationally (see Daly & Hennessey, 2001) – that the bulk of officers have been obliged to train to conduct. They have in fact been obliged to train to facilitate *conferences* because of the particular interpretation of the *Youth Justice Act 1997* (Tas) adopted by Tasmania Police. The two practices are very different, cautioning being a far less demanding procedure long established before the emergence of conferencing (Braithwaite, J. & Braithwaite, V., 2001; Seymour, 1988). Requiring officers to conduct formal cautions is an acceptable and pragmatic approach. Formal cautions, just as they are described in the legislation, are not a complex or lengthy procedure. They do not require much preparation. Although the victim may be present, no interaction with the offender is supposed to occur and the process can be concluded in 10 minutes. Compelling officers to be trained as conference facilitators, though, is fraught with danger. Facilitating a conference

⁶⁴ Currently the senior management of Tasmania Police does not produce benchmarks for the use of juvenile diversions as it does for other aspects of policing, such as clear-up rates of motor vehicle theft. However, it does require that the four districts produce statistics for the purposes of comparison (Lennox, pers. comm., 7/1/2003).

frequently involves highly charged emotional interactions. The process seldom lasts less than 45 minutes and often lasts 90 minutes. The body of knowledge on good practice in conferencing is rapidly expanding. Increasing emphasis is placed upon the preparation of conferences (Palk et al., 1998). Facilitating conferences is a skilled and at times delicate 'art' (Walgrave, pers. comm., 14/10/2002). Both the preparation and facilitation of conferences requires intuitive recognition of complex emotional dynamics (Ahmed et al., 2001) to avoid stigmatization and to maximize the potential for restorative justice to occur.

Facilitating conferences in a restorative way is difficult. For instance, in the Thames Valley, United Kingdom, police facilitators were *re-trained* according to the detailed recommendations of an interim study. Even after re-training, the follow-up study generally described the progress as 'patchy' (Hoyle et al., 2002: 14). But an experiment that sheds light upon volunteers in particular was conducted by McCold and Wachtel (1998), who trained 20 volunteer police officers in conference facilitation. The researchers suspended the study shortly after it had begun. They decided to run unscheduled extra training to 'reinforce the reintegrative intention of conferences' (McCold & Wachtel, 1998: 6). Despite two episodes of training in quick succession, the second being specifically focussed on problems observed, the researchers reported that the officers 'did a sufficient but not exemplary job in adhering to principles of restorative justice and ensuring due process' (McCold & Wachtel, 1998: 6). Logically it must be asked, if this was the performance of volunteers in an observed setting, what would be the performance of non-volunteers in an unobserved setting?

One implication of compelling officers to train as facilitators is that they will probably be less interested in the training itself. Evidence from psychological studies suggests that – not surprisingly – disinterest hampers effective learning (Krapp, 1999). Perhaps then, less interested officers are less likely to learn essential elements of facilitator training courses? Other researchers have pointed out that voluntary involvement in training increases the likelihood of highly able trainees (Martin, 1998). That is, the researchers observed a self-selection dynamic where the more able individuals volunteered for training. However, recruiting officers on an involuntary basis does not allow for that self-selection dynamic to occur and increases the *likelihood* of trainees with low ability.

Admittedly there are examples where even sceptical officers have become highly skilled facilitators and enthusiastic advocates of conferencing (Bazemore, 1997a). However, it is argued that these individuals are the exception and not the rule. Generally, involuntary recruitment will lead to increased numbers of disinterested officers, who are less likely to learn effectively because of their disinterest. Also, involuntary training will increase the numbers of trainees who are ill suited to conference facilitation.

The private comments that one police facilitator made to me seem to confirm concerns about involuntary training. This officer evidently had enjoyed a long career in various capacities, including as a detective. With the introduction of the new legislation he had been, in his words, ‘fingering’ to conduct formal cautions in his station and thus was obliged to train as an authorized officer. He was sceptical about the effectiveness or usefulness of diversion. Normally a waste of police resources, diversion was acceptable in his view only where semi-retired (and not able bodied) officers dealt with juveniles who did not come from families ‘known’ to the police. Deterrence and successful convictions – indeed prison sentences – were the central goals of the police force according to this police facilitator. The two conferences facilitated by this officer were the worst observed by the researcher, with few of the fundamental aspects of training employed. The second conference ended in open aggression between the participants and at its conclusion he commented to the researcher:

‘I’m not a mediator. I didn’t know what to do. I just started thinking, ‘What is the quickest avenue out of this conference?’”

This officer, who undoubtedly had valuable skills for other policing capacities, almost certainly would not have volunteered to become a conference facilitator.

The DHHS advertised the positions of independent facilitators to individuals outside the DHHS. In 2000, 12 positions were initially advertised and the successful applicants were chosen from a pool of 18. Since that period the number of facilitators has fluctuated up to 28 independent contractors statewide. Initially, a panel of three members of the DHHS, Youth Justice Division, interviewed applicants. However, it appears that for some time new facilitators have been recruited by the facilitator co-ordinators (Drelich, pers. comm., 30/12/2002). There are three co-ordinators in Tasmania, one for each of

the three DHHS districts: south, north, and northwest.⁶⁵ Recruitment is not a difficult process for the co-ordinators. This is partly because the co-ordinators receive frequent expressions of interest from individuals wishing to become facilitators (Steele, pers. comm., 7/1/03). Generally the co-ordinators are aware when they will need to induct new facilitators and the positions are quickly filled. To some degree the co-ordinators attempt to contract a mix of ages, genders, and professional backgrounds. Obviously these recruitment procedures do not suffer from the problems associated with involuntary recruitment.

However, Tasmania Police and the DHHS recruitment strategies have similarities in another sense. Neither agency requires trainees to successfully complete a facilitator training course before they are accepted as a facilitator. Successful completion of training is a prerequisite for conference facilitation in some other jurisdictions, such as New South Wales (Youth Justice Conferencing Directorate, 2000) and the United Kingdom (Miers, et al., 2001). Although this practice increases the cost of recruitment where trainees are rejected (Miers, et al., 2001), this method recognizes that not everyone is suited to conference facilitation (Braithwaite, J. & Braithwaite, V., 2001). Arguably the system saves resources by acting as an efficient first filter instead of depending entirely upon later monitoring of practice standards. More important, incompetent facilitators are rejected before they can actually mismanage a conference and thereby negatively affect any of the participants. For Tasmania Police, a form of training accreditation might alleviate some of the problems caused by its involuntary recruitment procedures. Admittedly, training accreditation probably necessitates high levels of role-playing where each recruit is given the chance to facilitate a mock conference. This would have cost implications.

5.2 TRAINING

Reflecting the organic nature of restorative justice, even within the specific arena of juvenile conferencing, important differences have evolved in practice. There is no internationally recognized accreditation or standard format for the training of facilitators

⁶⁵ Les Drelich in the southern district, Jacqueline Steele in the northern district, and Seainin Finnegan in the north-western district.

(Van Ness, 2003). Indeed, training can vary in length from single sessions⁶⁶ to seven days and contain very different visions of restorative justice and good practice (Miers et al., 2001).

In the Australian setting, conferencing practice has been influenced by the Wagga model in some jurisdictions and the New Zealand model in others. As described in chapter one and two the Wagga model encourages the use of scripts by facilitators and draws upon the theories of reintegrative shaming and affect theory. The Wagga model itself has been refined and adapted differently by government agencies and private companies, such as Transformative Justice Australia and Real Justice.⁶⁷ The facilitator training provided by Tasmania Police is closely based upon the Wagga model. The DHHS training also has some similarities with the Wagga model, namely in the use of a script, though the training sessions have been stripped of any theoretical grounding.

The content of most training courses is difficult to access. Consequently, it is useful to consider some of the practical features of the training currently offered by Transformative Justice Australia (TJA)⁶⁸ as a basis for comparison with the training provided by Tasmania Police and the DHHS. TJA training is not presented as an ultimate or pure form of facilitator training (see for example, Moore & McDonald, 2001). Nor is its specific psychological theory of conference dynamics expounded (Moore & McDonald, 2000). However, the TJA course (a) has evolved over 10 years and attempts to respond to theoretical development, (b) has very definite roots in the Wagga model, (c) was used to train community conference facilitators in New South Wales (in the late 1990s), and (d) received international recognition in being chosen as the training course for a very large randomized controlled experiment underway in Britain.

Generally spanning five days, TJA training is structured upon various forms of set dialogue, role-playing, daily commentary, and question-and-answers sessions. The training begins with discussion of essential restorative principles and moves on to role-playing where each participant is given the opportunity to experience the position of an

⁶⁶ Advertising flyer provided by *Marian Liebmann and Associates*, 52 St Albans Road, Bristol BS6 7SH, United Kingdom. See also, for example, *Ken Webster Consultancy and Training* (<www.rjkbases.org.uk/>).

⁶⁷ See <www.tja.com.au/> and <www.realjustice.org/> respectively.

⁶⁸ TJA provides training for a variety of restorative forums and not just conferencing for juvenile offenders.

ordinary member of a conference. This introductory role-playing provides, the course designers argue, basic appreciation of the format of conferences and the emotional dynamics that can occur (Moore, 2002). Then follows a theoretical explanation of the effectiveness of conferencing. TJA's own focus is upon an explanation of the emotional dynamics that occur in restorative forums, drawn from international literature and empirical research. The importance of a schema or theoretical framework for facilitators is heavily emphasized. Because each conference is unique, training on facilitating technique only is insufficient: 'If facilitators lack a sound theoretical understanding, they will find themselves in difficult situations without adequate guidelines for professional judgement' (Moore, 2002). The practical training addresses conference preparation, language, body language, and specific techniques for facilitating including the use of a script. Scripts provide facilitators with, *inter alia*, a scripted explanation of the conference and its purpose, a seating plan, details of the offence, and the names of the participants. Scripts remind facilitators of the essential movements of a conference and how to interact with the participants during each movement. Role-plays are again employed, both for conference preparation – briefing offenders, victims, and supporters – and for conference facilitation. The trainers advise that face-to-face conference preparation can take anywhere from 5 to 10 hours to complete. Each participant is placed in the role of facilitator at some stage. Workshops on the 'conferences' allow participants to constructively critique their own performance and that of their colleagues. The extensive use of role-playing also enables the trainers to take notes on each participant's performance as a facilitator, allowing them to discuss with the programme coordinator each participant's potential. The training incorporates the particular legislative and administrative requirements of the relevant jurisdiction. The participants leave with a kit and contact details for queries and problems.

It is worth briefly commenting on the importance of role-playing as a recognised powerful method for learning about social psychology and social interaction (Plous, 2000; Cockrum, 1993). Role-playing has been successfully employed in a variety of settings. For instance, to reduce racial prejudice (McGregor, 1993) and to teach medical students to interact with patients in a way that empowers the patients (Benbassat & Bauman, 2002). Another study in the medical arena found that the appropriate communication skills of even experienced health care professionals diminished in highly

emotional role-playing scenarios (Razavi et al., 2000). This suggests that role-playing might be valuable for re-training experienced facilitators.

It is reiterated that the TJA course is presented here as an example of a reputable method of training facilitators. Putting to one side TJA's particular restorative ideology, it is possible to contrast fundamental features of its training with training in Tasmania, namely its length, focus on theory, detailed description of all aspects of conferencing, and extensive use of role-playing.

5.2.1 Training by Tasmania Police

The importance of training police facilitators well cannot be overstated. Conference facilitation requires many skills, including managing often highly emotional and confrontational discussions. Arguably, juvenile conferences should demand higher practice standards because of the vulnerability of juveniles to stigmatisation (Farrington, 1977). In support of this view it is important to note that the *Beijing Rules* (Rule 12) state that any police officers who come in frequent contact with juveniles should receive specialist training.

One training session provided for officers of Tasmania Police was observed by the researcher on the 18th and 19th of October 2000. The course was designed and delivered by Senior Constable John Lennox. Lennox based the course on his own training, a three day course in March 1995, and experience of facilitating over 200 conferences. His initial training was conducted by Terry O'Connell, who was at that time working with TJA. The TJA course has developed considerably since 1995, although the theoretical grounding on affect theory and reintegrative shaming still remains.

The backbone of Lennox's course was five hours of lectures on conferencing. The lectures described the *Youth Justice Act 1997* (Tas) in detail and then moved onto restorative justice, its historical origins, and a description of the failings of the traditional justice system. Further discussion of restorative justice was heavily based upon Braithwaite (1989; Braithwaite & Mugford, 1994) with no recognition of other restorative ideologies at all. Woven into this were early works of Moore and O'Connell (1994), using affect theory to describe the psychological process of reintegrative shaming

including the 'compass of shame'. Emphasis was also placed upon the body language of offenders as well as typical rationalizations of wrongdoing (techniques of neutralization (Sykes & Matza, 1958)). The remainder of the lecture centred on conferencing techniques, including the basic aspects of conference preparation, designing a simple script, beginning the conference, dealing with common emotions, negotiating an agreement, and closing the conference with refreshments.

Several positive aspects of the training can be listed. There was a focus on theory and a description of many of the aspects of conferencing. Importantly, there was a genuine restorative spirit to the description of juvenile offenders, a conviction of the effectiveness of conferencing for all types of offenders, a distancing from deterrence and punishment, and at times a sympathetic understanding of adolescence. The combination of affect theory and Lennox's own experience encouraged sensitive facilitation and gentle techniques to overcome difficulties. From the researcher's perspective the trainees responded very positively to a police trainer, a respected officer who could explain his own change in perception towards restorative police practice. It was in this sense unlike the recently reviewed police cadet training in Tasmania. The cadet training was criticized for its 'contractarian' perspective of the law and society, which the authors claim promoted a conception of the police as separate from the community (Malpas & Atkins, 2000: 9).

However, the training suffered from a number of problems, which can be divided into theoretical content and practical content.

5.2.1.1 Theoretical content

Unlike the five day TJA course, Lennox had only two days to train 26 students. Consequently, the course simply could not emulate the standards of the TJA training in terms of its theoretical depth, detailed description of conferencing, nor its use of role-playing. Three hours, or almost one fifth, of the training was devoted to outlining the legislation and explaining the procedural requirements surrounding formal cautions and community conferences, leaving effectively one day and a half to teach the trainees how to facilitate conferences restoratively. It has been suggested that the length of training required for different restorative forums depends upon the complexity of the restorative intervention (Braithwaite, J. & Braithwaite, V., 2001). A list of restorative

interventions, from simplest to most complex, includes family disputes, playground disputes, workplace disputes, 'police cautioning and casual police encounters with citizens on the street, diversion of minor juvenile offenders, serious crime, serious crime where there are special risks of power imbalances (such as rape or corporate crime), major internal state crime, and peacemaking between warring nations' (Braithwaite, J. & Braithwaite, V., 2001: 67). This scale highlights the importance of the training of authorized officers in Tasmania. Under section 3(1) of the *Youth Justice Act 1997* (Tas) juveniles can be diverted to formal cautions for very serious crimes, such as sexual assault (where the offender is aged between 10 and 13 years) and grievous bodily harm. Whilst perhaps the majority of formal cautions involve the diversion of minor juvenile offenders, there is the potential for serious crimes with a special risk of power imbalances to be dealt with in these forums. It is worth noting also that some officers in the United Kingdom are trained for five days to deal solely with minor juvenile offences (Hoyle, et al., 2002).

Arguably, partly because of its limited time frame, the Tasmania Police facilitator training did not equip officers to prepare for or facilitate complex and emotional conferences involving very serious offences. Though it is true that the course delved into emotional dynamics, the content was tailored towards conferences involving relatively minor crimes. This arguably constitutes the gravest inadequacy of police facilitation in Tasmania. In particular, concern must lie for the victims of serious sexual or violent crimes in conferences facilitated by officers, who essentially are trained to facilitate conferences for minor crime. The complexities of sexual crimes are especially worrying, given the unique power imbalances involved (Yarvis, 1995). Consider also the litany of psychological reactions that sexual assault victims may suffer, including posttraumatic stress disorder (Wright, 1985; Burgess, 1983), depression, nightmares, anxiety, social problems (Young, 1995), phobias (Lennox & Gannon, 1983), and perception of stigmatization (Anderson, 1982).

These are not academic or theoretical concerns. Analysis of the central police database in Tasmania to April 2002 (see 4.2) indicates that six formal cautions dealt with indecent assaults.⁶⁹ A further three formal cautions dealt with the summary offence of assault

⁶⁹ *Criminal Code Act 1924* (Tas) s. 127.

with indecent intent.⁷⁰ Other serious offences dealt with by way of a formal caution include seven cases of aggravated assault, four cases of wounding, three cases of aggravated robbery, one count of attempted aggravated armed robbery, and over 160 instances of burglary.⁷¹

The researcher observed two police conferences that involved sexual offences. One of these involved an indecent assault. It was the police conference referred to above (5.1) which ended in open aggression between the parties. The facilitator asked a junior officer to arrange the conference. Consequently, he had never met or spoken to any of the participants. His knowledge of the offence was limited to the original police report. The victim was seated next to the offender. The whole process rapidly disintegrated into arguments over the facts – the mother of the offender asking the victim why, if she was ‘so traumatized’, it had taken her three days to make her complaint to the police. The victim began to cry at this point and turned in her chair away from the offender towards her only supporter, her stepmother. After twenty minutes the facilitator announced that the process was not working. He asked the participants for ideas for reparation. None of the participants made any suggestions, so the facilitator asked the offender to shake everyone’s hand, including the hand of the victim. When the participants had left he expressed his sense of inadequacy as a facilitator. He also admitted that he had preconceived ideas about the offence: ‘They were just kidding around wrestling. He was sitting on her chest tickling her and then he got excited and wanted to see her tits.’

The other police conference involved an assault with indecent intent. Although it was far better facilitated it raised concerns about the adequacy of conference preparation. The offence had taken place at the offender’s home and was perpetrated against his seven-year-old friend. The offender’s stepmother was employed to mind school children in the late afternoons of the working week. One of the conference participants was a work colleague of the stepmother. After the conference the colleague informed the employer of the case. The employer sacked the stepmother on the basis that her home was not a safe place for children. The stepmother wrote bitter complaints to the police about the conference. She claimed that she was not aware that her stepson had admitted

⁷⁰ *Police Offences Act 1935* (Tas) s. 35.

⁷¹ Respective sections for aggravated assault, wounding, aggravated robbery, attempted aggravated armed robbery, and aggravated burglary are as follows: *Criminal Code Act 1924* (Tas), s. 183, s. 172, s. 240 (2), s. 240 (4), and s. 245 (b).

to the offence. She thought the conference was a forum at which interested parties could discuss what each thought had taken place. Of course, the stepmother might have been motivated to lie in her letter to the police in an effort to regain her job. However, it seemed strange that she would have consented to attend the conference – knowing that her work mate would attend – if she really did understand the full legal context of the conference. This case was a highly complex one. Nevertheless it appeared that some problems were, if not created, then exacerbated by inadequate preparation on behalf of the facilitator. The facilitator reported spending three hours preparing the formal caution, which involved eight participants.

Other than being far too short to adequately train officers to facilitate conferences for serious crimes, more specific criticisms can be made of the training course. Beginning with the theoretical content, of course some choice has to be made in deciding what aspect of restorative theory to use as foundation for understanding conferencing. Reintegrative shaming is a highly recognized restorative theory which provides very clear boundaries for effective and ineffective conferencing (see for example Braithwaite & Mugford, 1994). As an integral part of the Wagga model it has enjoyed arguably unequalled international popularity in the training of police and non-police facilitators (Young, 2001). However, it is well recognized that with insufficient training in reintegrative shaming theory there is the danger that trainees 'latch onto the shame word and think it suggests that they should mobilize direct verbal disapproval against wrongdoers in shame-laden contexts where that will be counterproductive' (Braithwaite, J., & Braithwaite, V., 2001: 67; see also Young, 2001; McCold and Wachtel, 1998). Braithwaite suggests that a theoretical grounding in reintegrative shaming is appropriate only where the course extends for a 'week or more' (Braithwaite, J., & Braithwaite, V., 2001: 67).

Unfortunately, the police facilitator training in Tasmania appeared to impart a dangerously incomplete explanation of reintegrative shaming. No actual definitions of reintegrative shaming or stigmatizing shaming were provided. Reintegrative shaming ceremonies are positive, Braithwaite (1989) argues, because of three essential elements: (a) shame is experienced for a set period, (b) positive bonds are maintained with significant others, and (c) the ceremony ends in forgiveness. Shaming may be stigmatizing, or 'disintegrative', if any of these elements are missing. Lennox's

course did not explore this vital distinction. Positive aspects of reintegration were discussed, but too vaguely and without repeated contrast to stigmatizing shame. Lennox suggested that ‘statements from the heart’ from the victim and supporters were essential. However, these sentiments were mixed with generic quotes and statements about shame that intimated the importance of shaming in general, rather than reintegrative shaming in particular. Direct examples from Lennox’s overhead include;

Societies in which shame is a strong cultural dimension have lower crime.

Ma te whakama e patu! ‘Leave him alone, he is punished by shame’.

It is not the shame of police or judges or newspapers that is most able to get through to us, it is the shame in the eyes of those we respect and trust.

The content on reintegrative shaming was synthesized with affect theory. This aspect of the training, from the researcher’s perspective, would have been positive but for the vague descriptions of shaming which surrounded it. Certainly it highlighted the different continuums of emotions that the different participants of a conference might experience and that a facilitator needs to be prepared to manage these emotions. In theoretical terms it reflected the model taught by McDonald and Moore in the mid 1990s – when Lennox was first trained as a facilitator (Moore, pers. comm., 5/3/2002). However, in the backdrop of the content on shaming the description of affect theory merely confirmed that at times the facilitator should directly shame the offender, namely when the offender does not seem to be affected by shame. For instance, again from Lennox’s overheads, ‘authorized officers will need to promote the right affects, degree of shaming, sympathy and empathy by asking appropriate questions or saying something to prompt a response’.

It is difficult to criticize any police trainer for not being aware of recent developments in reintegrative shaming theory. As discussed in chapter one Braithwaite originally argued that deliberately directing shame towards offenders (and even their supporters) could be very useful (1989; note also Braithwaite & Mugford, 1994). Braithwaite’s more recent emphasis is upon confronting wrongdoing ‘indirectly’ and ‘implicitly inviting the wrongdoer’ to face their action, apologise, and seek restoration (Braithwaite, J. & Braithwaite, V., 2001: 33; see also Harris, 2001). However, this change in direction is essentially buried deep within the dense *Shame Management Through Reintegration*. Arguably, given police trainer’s other professional roles within the police force they cannot be expected to keep abreast of such theoretical developments

Further complicating content was the repetition of certain objectives of the Tasmanian legislation concerning punishment and rehabilitation. It is difficult for the objectives to be ignored by those implementing the diversionary scheme. Previously it was noted that the *Youth Justice Act 1997* (Tas) mixed restorative goals with a justice model of juvenile justice (see 3.3). However, the issue of punishment is controversial in restorative justice. Many commentators argue that punishment is a concept that cannot mix with restorative philosophy (Walgrave, 2002). Incorporated into the lecture material were conferencing objectives which came directly from the Act, such as ‘punishing and managing youths who have committed offences’ (s. 4). It is tentatively suggested that reiterating the place of punishment in conferencing further legitimised the appropriateness of direct shaming, originating from the facilitator or others.

Drawing attention to section 10 of the *Youth Justice Act 1997* (Tas) also seemed to contradict the impression that the conference group decide upon sanctions together. The section, reproduced in the overheads, states that ‘an authorized officer may also require a youth to enter into one or more of the following undertakings’. This section makes sense in the (arguably original) context of a caution, where essentially the officer interacts with the youth concerned. However, interpreted in the context of a police conference, it strongly implies that police facilitators are the final arbiters of punishments – a far cry from an impartial and empowering restorative facilitator (Hoyle et al., 2002). Perhaps it is not surprising then that the researcher frequently observed police facilitators summarising the sanctions for the offender with phrases such as ‘What I’ll get you to do is...’. On three occasions a phrase that was used by the facilitator after the sanctions had been listed was ‘Can you do this for me?’.

A number of comments from police facilitators highlight the inadequacies of the training. One young officer, who had conducted over 30 conferences, stated, ‘There’s not much to it really [conferencing]. You just tear them down [the offenders] and build them back up again’. That the officer thought of facilitating as a simple skill is telling. But her comment also clearly reveals that, first, she considers the facilitator to be the *prime mover* in conferences, rather than one who empowers the key participants to deal with the aftermath of crime. Secondly, implied in the statement was that the facilitator’s role is to *deliver* an emotional experience *to* the offender – whose emotions seem easily

manipulated – within the conference. Finally, the emotional experience to be delivered seems to involve an alarmingly simplistic fusion of reintegrative shaming and affect theory. That is, any amount of criticism or stigmatization is warranted providing the conferences ends with a few nice comments about the offender.

Other comments and practices of the police facilitators revealed that often the importance of the script in Lennox's training was not understood. It has been argued that the use of scripts is a strength of the Wagga model because, used properly, it helps provide regularity in the delivery of conferences (Hoyle et al., 2002). Importantly, the use of scripts minimizes the intrusion of the facilitator into the interaction between the key participants and thus increases the chance for a procedurally fair and empowering experience (Hoyle, et al., 2002). The original design of scripts reflected the optimal course of offenders' and victims' emotions through a conference as predicted by affect theory (Moore, 1993). Scripts provide facilitators with a basic structure to follow that increases the chance that the conference draws all participants towards positive affects. Lennox faithfully presented the use of scripts this way. But evidently, whether it be due to insufficient training time, disinterest, or inability, some officers merely saw the script as an administrative checklist. One officer stated:

I usually use the script. It's jogs my memory. It doesn't matter which order I go through things ... just as long as they're all done.

Another officer appeared to prematurely conclude a conference once there had been basic discussion of the facts and the first practical idea for reparation was raised. The first idea for reparation was that the offenders undertake to do some gardening for the victim under supervision. The officer immediately stated 'that's what I'm looking for' and began to draw the conference to a close. As he was completing his paperwork more issues and facts came to light that the participants were clearly interested in discussing. Instead of continuing the conference the officer ended it. The victim still patently wanted to discover what had happened to some of his stolen property. He also wanted to share his children's emotions concerning the burglary that occurred in their home. One of the offenders was already leaving the room with her mother at this point. The offender blushed as she heard about the feelings of the children. Standing in the doorway to the conference room she asked if she could give some of her pocket money to the children. The facilitator replied 'you do whatever your conscience tells you

to', and the offender and her mother left. Seemingly, the facilitator did not understand the relationship between affect theory and the script as encapsulated in Lennox's training. The emotions of key participants had not moved away from shame-humiliation (for the offender) and anger (for the victim) towards a joint interest in repairing the damage caused (see Moore & McDonald, 2000). In short the issues had not been resolved. But from a technical or literal interpretation each section of the script had been completed – participants had been introduced, each had spoken about their perspective of the offence, and *an* agreement had been reached.

5.2.1.2 Practical content

Several criticisms can also be placed at the door of the practical content. Chief among these concerns the lack of role-playing exercises. Only three role-playing exercises were conducted of approximately 20 minutes duration each. The first was facilitated by Lennox, meaning that only two of the 26 trainees experienced facilitating a conference and received feedback on their performance. In contrast, each TJA trainee facilitates at least one role-playing conference. Again unlike the TJA course, no role-playing was conducted concerning the briefing of offenders, victims, and supporters in pre-conference preparation. Without role-playing Lennox was unable to detect serious misconceptions of the theoretical content. More important, Lennox had no opportunity to judge whether individual trainees simply lacked the ability to facilitate conferences. In fact, the whole course was marked by an assumption that all of the 26 officers would become capable facilitators. Experience suggests otherwise: 'A large proportion of people could never be good restorative justice facilitators with any amount of training' (Braithwaite J. and Braithwaite, V., 2001: 66).

Secondly, the ambiguity in the *Youth Justice Act 1997* (Tas) concerning formal cautions and police conferencing was not explained. As described in chapter three, a common sense reading of the legislation suggests that formal cautions are substantially shorter and simpler processes than community conferences. Yet Lennox's training tended to assume that the only interpretation of the Act could be that 'formal cautions', as described in section 9, are almost identical to community conferences in format. Probably as a direct consequence of this, the researcher came across many different perceptions amongst authorized officers. Lennox stated that he conducts conferences only if a victim is present. If a victim is not present then he conducts the procedure as a caution,

although he still tries to ‘draw the affects out’. By this Lennox means that he still uses affect theory to draw the participants away from different types of negative feelings towards a group sentiment of interest or excitement about repairing the damage caused. His ‘cautions’ can still last 45 minutes. At least from the researcher’s perspective, there seemed little difference between Lennox’s ‘cautions’ and his ‘conferences’. Other police facilitators used similar approaches. Other authorized officers genuinely ran processes without victims as short and simple cautions, facilitating full conferences only when a victim was present. Two officers observed conducted all diversionary procedures as cautions.

Thirdly, it seemed that the training should have addressed police behaviour within community conferences – conferences facilitated by the DHHS – to a greater degree. As noted, each community conference needs to be attended by an authorised officer. In a course designed to train officers to facilitate police conferences it is vital to emphasize that their role within a community conference is very different and certainly does not involve behaviour that approaches co-facilitation with the DHHS facilitator. In a community conference the police officer represents the interests of Tasmania Police. The offender, victim, and officer must agree on the conference outcomes for the conference to succeed. From the researcher’s perspective the trainees should have been warned that encroaching upon the facilitator’s role within a community conference could (a) disempower the major participants, (b) cause confusion as to roles and undermine the facilitator’s position, (c) cause a conflict of facilitating styles, and (d) damage the essential professional relations with independent facilitators. Additionally, the training did not explain that although cautions can be administered within a community conference they are merely an option that the conference group as a whole can agree upon.⁷² Delivering formal cautions within a community conference is not the prerogative of the authorized officer. Indeed, the training also omitted to explain that formal cautions can be administered by other conference participants (see 3.4.1).

Fourthly, too little attention was paid to the preparation of conferences in the training. Briefing conference participants has been linked to dramatic increases in victim satisfaction especially, from 50% to over 90% (Palk et al., 1998). Other benefits include

⁷² *Youth Justice Act 1997* (Tas) (s. 16(1)(a))

giving the participants a grasp of restorative goals over and above punitive aims. Generally speaking, good practice advocates face-to-face meetings so that the facilitator has a good understanding of the personalities, emotions, facts, and issues before the conference commences (Maxwell & Morris, 1993; Hoyle et al., 2002). This prepares the facilitator to avoid negative conflict, to direct discussion to important issues, to negotiate an agreement and so on. Lennox did cover some essential aspects of preparation. However, he suggested that whilst visits were 'preferred', telephone conversations would suffice. Also, Lennox seemed to concentrate more upon preparation with the parents of offenders to a far greater degree than with the offender themselves. Lennox's views of preparation appear to have been adopted in practice. In the following chapter results are presented that suggest that police facilitators spend an average of one hour preparing their conferences. Additionally, few of the police conferences observed by the researcher had involved face-to-face meetings with the participants. Furthermore, it was very common for facilitators not to have spoken to the offender themselves prior to the conference. In the course of the study one police facilitator explained that he *never* spoke to any of the participants before his conferences. He asked a junior officer to organize the date and time of the conference with the participants. The police report on the offence was all he felt he needed to know about the event. This practice raises questions about police construction of events dominating the conference (Young & Goold, 1999).

Fifthly, there was little practical consideration for ways in which police facilitators can ensure that the sanctions agreed to in their formal cautions are consistent with the agreements reached in other formal cautions. Actually, consistency between the agreements made in formal cautions is not specifically required under the *Youth Justice Act 1997* (Tas). However, the Act does state that in all forms of diversion youths should not be treated more severely than an adult who has been found guilty of the same offence (s. 5(1)(b)). This principle is reflected in the *Beijing Rules* (article 40(4)). Section 5(1)(b) of the *Youth Justice Act 1997* (Tas) appears to necessitate some sort of practical means for police officers to gauge appropriate undertakings for different offences. In any case, evidently members of Tasmania Police want consistency to be applied to the 'formal caution' scheme (LETTER). Arguably doing so would increase perceptions of fairness in the community (see Warner, 1994) – an important goal since perceptions of fairness of the legal system have been linked to compliance with the law (Tyler, 1990; see also Ahmed et al., 2001).

The final issue arising out of the practical content of the training concerns the protection of due process for juveniles, one of the most thorny and arguably unresolved matters facing conferencing and restorative justice. A difficult criticism for advocates of police conferencing to counter is that the police are far less accountable in their own conferences than they would otherwise be in court (Warner, 1994). Well rounded training might have prepared officers for the possibility that allegations of police misconduct, minor or otherwise, might be made within a conference. Further, in keeping with a community-oriented restorative ethos, it should have been emphasized that criticisms of police activity should not be met defensively. True facilitators are impartial and other restorative police programmes spend a great deal of time teaching their trainees to step out of a narrow, exclusive mind-set of policing (Hoyle et al., 2002). Especially since the training of police cadets in Tasmania was criticized for promoting a police identity as one that is separate from the community (Malpas & Atkins, 2000), the authorized officer training should focus on impartially dealing with complaints made against officers in conferences. Police need to address how the issue of complaints need to be dealt with during a conference.

Other than allegations of misconduct, arguably the training should also have highlighted that what is alleged to have occurred might not constitute an offence. For instance, a necessary mental element of an offence might be missing, or the youth may have a legitimate defence – self defence in a brawl being a classic example. Police facilitators have a double responsibility to be aware of these issues and respond to them appropriately whether they arise in their conference preparation or during the conference itself. There is a double responsibility, first, because they have some understanding of the legal issues concerned, unlike the DHHS facilitators. Secondly, the lack of accountability in police conferences surely places a greater onus on police facilitators to ensure that young people are treated fairly by the legal system.

5.2.2 Training by the DHHS

With its first draft of 12 trainees the DHHS provided a two day training course delivered by an independent consultant, David Kearney, in February 2000. The researcher was unable to uncover many details about the course or the consultant who has moved inter-

state, although the original materials are still used and are described below. It seems that Kearney, working under *DJ Kearney and Associates Services in Training and Development* in Tasmania, did not have any expertise in restorative justice or conferencing (Drelich, pers. comm., 30/12/2002).

Since then a further 5 facilitators have been contracted and trained. There are no formal policies for training facilitators in the DHHS. Consequently, the practices across the three DHHS districts have developed in an organic fashion. In the southern DHHS district the training is mostly conducted by the facilitator co-ordinator, Les Drelich. Drelich has qualifications in social work and over 20 years experience in what he describes as 'social work and human interaction' (Drelich, pers. comm., 30/12/2002). Other than observing and participating in Kearney's course, he has had no specific training in restorative justice or conferencing. To date Drelich has observed over 200 community conferences. The Senior Practice Consultant for the Youth Justice Division of the DHHS, Steven Rogerson, conducts training in the northern and northwestern districts. Rogerson's role in the DHHS is to incorporate restorative justice into the policy and practices of the Youth Justice Division. His position demands a sound grasp of the restorative justice literature, however he has not been trained as a facilitator.

When a new facilitator is contracted Drelich or Rogerson will spend up to one day explaining the principles of restorative justice, the objectives of the *Youth Justice Act 1997* (Tas), and the process of facilitating a community conference. The restorative content encompasses the general aims of restorative justice for victims, offenders and communities. No specific theories, such as affect theory or reintegrative shaming, are discussed. These training days obviously do not follow any structure resembling the TJA course in terms of lectures, role-playing and so on. The 'trainee' will then observe four to six community conferences (where consent is granted by the participants), generally accompanied by the co-ordinator of their district. On two occasions training days have been provided for trainees, which are described below. The courses have only been offered when the DHHS has contracted two or more new facilitators at the same time. The facilitator then begins facilitating conferences. The first few conferences are observed by co-ordinators. The co-ordinators suggest that since 2000 they have become more directive in their explanations to facilitators of good practice in conferencing (Drelich, pers. comm., 30/12/2002; Jacqueline Steele, pers. comm., 7/1/2003).

Over the last year Drelich has also introduced a ‘buddy system’ whereby newly trained facilitators are paired with experienced facilitators. The experienced facilitators provide support, advice and feedback concerning all aspects of conferencing. In the north and northwest, new facilitators are given the contact details of experienced facilitators and are encouraged to seek advice for practice issues.

The researcher observed the two DHHS training days mentioned above.⁷³ The most positive aspect of these courses was the trainer’s enthusiasm for conferencing and a demonstrated interest in young people. However, she was a relatively inexperienced facilitator who had conducted approximately 12 conferences at that stage. It was apparent that the DHHS viewed the trainees as experienced professionals from a discernable ‘social justice’ or ‘welfare’ setting who would not need extensive training to competently facilitate conferences. This sentiment was openly expressed by the trainer, but was more clearly evident in the training itself: the courses were very short – only three hours of training once breaks were accounted for. Token theoretical content included a 10-minute description of restorative justice and a single paragraph in the introduction to the course materials. No theoretical perspective was forwarded as an explanation of the effectiveness of conferences. Perhaps the most dominant philosophy that was projected in the course came from the objectives and principles of the *Youth Justice Act 1997* (Tas), which arguably embody a quasi-restorative perspective of youth crime (see 3.3). Thus there were references to the necessity for the ‘appropriate treatment, punishment, and rehabilitation of offenders’.

The bulk of the course concentrated on facilitating practice. This content was based predominantly upon the materials first provided in Kearney’s course. Each trainee was given a copy of the materials and was encouraged repeatedly to study them after the course. The materials describe a model of conferencing quite well: conference preparation, choosing a conference venue, introducing the conference and following a general script, appropriately engaging offenders, dealing with anger and confrontation, identifying emotions, identifying possible undertakings, reaching an agreement, and closing the conference with refreshments. The DHHS trainer placed additional

⁷³ Both held in Launceston on the 13/3/2001 and the 6/4/2001.

emphasis upon conference preparation, suggesting that the more effort facilitators made with preparing a conference the more likely the conference would have a positive outcome. Essential in her view were face-to-face meetings with the victims and the offender. The trainer's lectures concluded with a detailed explanation of the administrative processes surrounding each conference. The final stages of the afternoon were dedicated to three hypothetical case studies. The case studies challenged the trainees to consider issues affecting the preparation of conferences. Trainees were given five to ten minutes to discuss each case in groups, followed by a general discussion. No role-playing activities were conducted in the first course observed by the facilitator. One short role-playing activity, approximately 10 minutes, was conducted in the second.

Many of the criticisms that were made of the training provided by Tasmania Police also apply to the DHHS course, though in some instances with more weight. Most striking is the extremely short length of the training. Those trainees who are contracted individually receive one day of training with a co-ordinator or senior practice consultant. Trainees who are contracted in groups *may* receive an additional course, such as the one described above. Obviously this is markedly shorter than the five day course typically offered by TJA. Community conferences can deal with very serious crimes, some involving special power imbalances between the main participants. The central police database (see 4.2) indicates that from February 2000 to April 2002 community conferences dealt with one case of aggravated sexual assault, one case of indecent assault, and another of assault with indecent intent.⁷⁴ Regarding other serious offences, the community conferencing scheme dealt with an attempted aggravated robbery, three cases of wounding, and 44 instances of burglary.⁷⁵

As noted, facilitating conferences with the potential for special power imbalances between the participants is considered very difficult and requires intensive training (Braithwaite, J & Braithwaite, V., 2001). Poorly conducted conferences could result in re-victimization, stigmatization of the offender, and other negative repercussions (Maxwell & Morris, 1999; see 2.1.3). Additionally, DHHS facilitators need to be able to negotiate potentially heavy sanctions, including up to 70 hours community service

⁷⁴ Aggravated sexual assault is an offence under the *Criminal Code Act 1924* (Tas), s. 127A. See footnotes 8 and 9 for indecent assault and assault with indecent intent.

⁷⁵ See footnote 10 for relevant sections.

(whereas police conferences can agree on up to 35 hours community service). Unlike agreements made in formal cautions or police conferences, if youths fail to complete the undertakings of a community conference the matter can be referred to court. It is suggested that providing such a short course for facilitators intimates to them that conference facilitation is not particularly skilled or challenging.

A number of events at community conferences observed by the researcher indicated that some of the DHHS facilitators did not grasp elementary aspects of their training. Kearney's materials, referred to above, suggest that the most basic structure of conferencing involves introducing the participants, allowing each participant time to describe the events and their feelings, clarifying disputed facts, and then drawing the group towards consideration of means of repairing the harm caused. However, one conference involved three stealing offences that had been committed in the youth's small neighbourhood on separate occasions. The facilitator did not allow discussion of all the offences to occur together, followed by discussion of how the youth could repair the harm caused by each. Instead, the facilitator dealt with each offence completely separately. That is, discussion of the first offence and appropriate reparation, followed by discussion of the second offence and appropriate reparation, and then the same pattern for the third offence. Each 'cycle' took about 20 minutes. This strange order or structure of the conference was impractical because it required the group to discuss some of the same issues three times, such as the youth's truancy and reputation in the neighbourhood. Additionally, the structure of the conference seemed to have a negative impact upon the mood of the participants. In particular, not being able to discuss all the youth's wrong doings in one session seemed to make it difficult for the group to effectively brainstorm ideas for reparation. Rather, positive sentiments about the youth seemed to be damaged by the revelations of his separate offences every 20 minutes. The conference ended sourly, with the offender and his grandmother refusing to stay for a cup of tea and the remaining participants talking about the hopelessness of the situation.

Other examples of facilitators who did not seem to understand elementary aspects of conferencing include two conferences run by one facilitator. Although he was skilled at other aspects of facilitating he appeared overly directive – at times clearly disempowering the participants. One conference he began by stating that 'the whole thing should only take half an hour', which obviously immediately capped how long the six participants

felt they could talk. Before the second conference began he mentioned to the researcher 'they'll [the participants] will sit where I tell them to sit. This is my show'. In another conference a different facilitator took turns with the authorized officer to explain the wrongfulness of stealing to the mother of the offender to the point where she stared at the floor and would not respond.

Since it seems that a little bit of knowledge is dangerous where reintegrative shaming is concerned (Braithwaite, J. & Braithwaite, V., 2001), it is fortunate that neither Drelich, Rogerson, nor the DHHS trainer made references to the theory. Still, reiterating TJA's warning, without a theoretical framework with which to understand conferencing, facilitators will not know how to respond to unique or unexpected problems (Moore, 2002). Numerous concerns have been raised as to the ability of police officers to comprehend restorative justice and adjust their practice accordingly (Sandor, 1993). However, increasingly it is recognized that paradigm shifts must be made by a wide variety of professionals to be able to facilitate conferences in a restorative way (Young, 2001; Hoyle et al., 2002). Evidently some welfare professionals, for instance, have found it difficult to refrain from personally guiding conferences in the direction they think best, rather than empowering those affected by crime to deal with the aftermath (Young, 2001). The DHHS training is delivered to people from very diverse backgrounds, far more diverse than the police trainees. DHHS facilitators include lawyers, psychologists, social workers, teachers, mediators, counsellors, youth workers, and ex-police officers. Each of these professional backgrounds can provide skills which are valuable for facilitating. Yet, each professional background may also present difficulties in comprehending restorative facilitation. Without in depth discussion of restorative justice or a theoretical framework of restorative practice, the trainees simply have no idea which of the practices they use in other capacities are inappropriate for facilitating. Moreover, as independent contractors, most facilitators have other forms of professional employment. Arguably this increases the chance that their facilitating practices would be influenced by their other professional capacities.

An excellent example of this concerns a skilled facilitator who approaches conferencing with experience in social work and narrative theory. Narrative theory promotes the telling of stories that individuals have about themselves. One of its aims is to enable people to see that a variety of 'stories' constitute their life and that negative events do

not define who they are (Freedman & Combs, 1996). Narrative shares some restorative goals, such as avoiding stigmatization and expressing feelings. Two conferences held by this facilitator were very successful from the researcher's perspective. However, in the third the facilitator's recommendation to express feeling was taken on board too literally by the participants, between whom much antagonism had existed for a number of years. The conference degenerated into high levels of profane verbal abuse between most of the nine participants. What was most significant was that the facilitator allowed this behaviour to continue for well over 30 minutes, perhaps because he thought it was therapeutic for the participants. It seemed that a cornerstone of restorative conferencing, mutual respect, was overcome by the narrative emphasis on expressing emotion. Perhaps the facilitator was also more accustomed to dealing with individuals rather than tense groups.

The example of the facilitator who split a conference into three cycles, mentioned above, highlights the importance of some focus on theory in training. In addition to restorative principles, facilitators need to be equipped with an understanding of conference dynamics. Affect theory, for instance, suggests that there should be a progression away from negative emotions towards interest/excitement in a conference (Moore & O'Connell, 1994). Arguably an understanding of affect theory would have alerted the facilitator to the danger of staggering the discussion of the offences into three cycles – repeatedly returning the offender to a sense of embarrassment and the victims to anger.

Role-playing – of both briefing participants before a conference and actual conference facilitation – is considered essential training in the TJA course (Moore, 2002). Whilst theoretical content may be understood without the opportunity to facilitate a mock conference trainees cannot discover what aspect of facilitation they find difficult. Role-playing also allows onlookers to highlight problems of which the trainee facilitator is unaware. As noted previously, observing role-playing can provide the important opportunity to detect whether some trainees simply will not make competent facilitators. None of these valuable opportunities were present in the few hours of DHHS training. Even to a greater extent than with the police training, the governing assumption of the DHHS training was that all of the trainees would make skilled facilitators.

Several crucial legal issues were not covered by the course. It has been noted a number of times that critics of juvenile conferencing claim that the legal rights of minors are more difficult to safeguard within diversionary systems (Warner, 1994). However, the DHHS trainees were not informed of the importance of legal representation and advice for young offenders. No consideration was given to the circumstances in which a facilitator, when preparing a conference, might suggest that a lawyer accompany a youth to a community conference. In fact, even the course materials made no reference to legal representatives in community conferences, who can attend a community conference if invited by the facilitator. Yet, none of the co-ordinators can recall a community conference that was attended by a lawyer (Drelich, pers. comm., 6/01/2003). This seems strange considering the number of serious offences that have been dealt with by way of a community conference (see above). Nor, indeed, were the trainees advised how to facilitate a conference attended by a lawyer. That is, how to respectfully set the boundaries for the lawyer's contributions and avoid the disempowerment of the major participants.

Perhaps special attention should have been paid to the admission of guilt from offenders aged between 10 and 13 years. This so partly because of the presumption of *doli incapax* that applies in Tasmania under section 18(2) of the *Criminal Code Act 1924* (Tas). This rebuttable presumption places an onus on the prosecution to prove that an offender in this age bracket at the time of the offence had sufficient capacity to know that the act or omission was one which they ought not to do or make. In the very least the section 'suggests that caution should be exercised' in regards to the 'knowledge of conduct and consequence' of those under the age of 14 (*R v Roy Cecil Mansell* (1994) 4 Tas R, 54, per Crawford J, *obiter dictum*). In response to *doli incapax*, other diversionary schemes, such as NSW, require that 10 to 14 year-old offenders receive legal advice before they consent to a diversionary forum (Youth Justice Conferencing Directorate, 2000). The training could have addressed appropriate courses of action for facilitators. For instance, during conference preparation concerns could be raised with facilitator coordinators, who could in turn review the matter with police gate-keepers. Or, in the course of a conference, facilitators should be prepared to adjourn the proceedings and review appropriate avenues, such as legal advice for the offender.

No negative sentiments were expressed about police practice during the DHHS facilitator training days, reflecting perhaps the strong rapport that exists between the police and government agencies in Tasmania. Drelich, for instance, stated that in over twenty years of working for the DHHS he has always observed open and positive working relationships with Tasmania Police (Drelich, pers. comm., 30/12/2002). These good relations are vital for the healthy functioning of the diversionary system. However, it is argued that facilitators should have been made aware that during the course of preparing or facilitating a conference important legal issues may arise. Obviously most facilitators do not have legal expertise. Nevertheless, they should be ready to react to basic issues, such as a denial of guilt, doubts about whether an offence is alleged, revelations of new facts possibly unknown to the police, allegations of police misconduct and so on.

An equally problematic legal issue for juvenile conferencing concerns the principle of consistency. Some have questioned whether conferences can maintain a degree of similarity between the undertakings agreed to in different conferences for like offences (Warner, 1994). As noted, two sections of the *Youth Justice Act 1997* (Tas) address this issue. Sections 17(2)(a) and 5(1)(b) require that a youth cannot be treated more severely than an adult who had been found guilty of the same offence. Community conferences in particular are supposed to take into account the sanctions that had been imposed by courts, community conferences and police officers (in 'formal cautions') upon young people for similar offences, but only if that information is available (s 17(2)(b)). Once again, no reference was made to these important sections at all in the training course or the accompanying materials. For the sections to have any effect, the training would have also needed to explain practical ways in which facilitators could routinely check the outcomes of courts, community conferences and formal cautions. In practice even conscientious DHHS facilitators have told the researcher that they have little idea what agreements are reached in other community conferences, let alone formal cautions or court.

5.3 MONITORING

Monitoring has been highlighted as an important means of maintaining the standards with which police conduct formal cautions (O'Connor, 1992; Warner, 1992).

Restorativists in Europe and North America are placing increasing emphasis on monitoring as a necessary feature of restorative justice systems (Van Ness, 1993). Importantly, there is empirical evidence for the importance of monitoring conference facilitators. Hoyle et al. (2002) found that experienced facilitators conducted their conferences in a less restorative way than those facilitators who – though inexperienced – followed the script supplied for them in training. In part this finding reflects the heavy emphasis placed upon the use of scripts in the particular model of conferencing employed in Hoyle et al.'s (2002) action research. But it also indicates that as time passes facilitators may be inclined to veer away from their training and develop their own style of conference facilitation. It is argued that one reason for monitoring is to check whether the styles that emerge still can be described as restorative. This is absolutely paramount in systems, such as Tasmania's, where (a) facilitator training does not involve much – or any – role-playing and (b) there is no opportunity for trainees to be rejected before they actually begin facilitating conferences. And if Braithwaite's qualitative observation is true, that many people simply can 'never' become good restorative justice facilitators 'with any amount of training' (Braithwaite J. and Braithwaite, V., 2001: 66), then monitoring would probably reveal a variety of inappropriate practices. In a long-term perspective, even highly skilled facilitators may in fact 'burn out' due to the emotional nature of conferencing. Monitoring can detect whether this occurs. However, apart from supervising practices monitoring can also provide much needed support. Facilitators often value objective feedback on their performance and can use advice to improve their skills.

Certainly these seem to be some of the aims of monitoring in the NSW conferencing scheme (Youth Justice Conferencing Directorate, 2000). Facilitators, or 'convenors' as they are called in that state, are overseen by administrators. At the convenor's request or the administrator's own instigation the two may discuss the preparation of an impending conference. The administrator may also observe the conference and then debrief the convenor on their performance. A few times each year meetings are held for the convenors to share experiences. Convenors are also required to complete learning modules or attend further training courses. These procedures allow administrators to determine whether each convenor will have their certificate of competency renewed annually.

Both Tasmania Police and the DHHS compare poorly to the NSW system. Neither agency has any official policies concerning monitoring. For all intents and purposes monitoring is non-existent for police facilitators. Only very rarely do two officers attend one conference and usually this takes place for co-facilitation, not for the purpose of critical evaluation of facilitation skills. In some city stations, two or three police facilitators work from the same office, which at least provides a degree of interaction between facilitators. Most suburban and regional stations only have one officer authorised to facilitate conferences. These facilitators have no incidental support or interaction with other facilitators.⁷⁶ Currently no refresher courses are offered for police officers. Neither are there any equivalent procedures to the 'certificate of competency' used in NSW. Finally, the current trainer for police facilitators, and future police trainers, could attend the new TJA model and actually be trained to train facilitators. For the current trainer, a course with TJA would build upon a model he already understands whilst drawing his attention to international developments in restorative practice.

The DHHS does provide certificates to its facilitators which are renewed every year. However, by all accounts the certificates are not akin to the NSW 'certificates of competency' since they are renewed without review of the facilitators' skills. In practice the DHHS co-ordinators monitor the facilitators to some degree. Where the DHHS expects a community conference to involve multiple undertakings, the conference is often attended by a co-ordinator to explain to the participants the legislative provisions concerning undertakings. The co-ordinators can also attend any conference they choose and they do not have to be invited by the facilitator. After the conference the co-ordinators sometimes give facilitators feedback on their performance. As noted previously (5.2.2), the co-ordinators are happy to correct what they perceive to be sub-standard practices. Persistent concerns about the efficacy of a facilitator may cause a co-ordinator to refer only simple cases to that person, or simply not to contract the facilitator again. Co-ordinators have ceased to contract three facilitators because they did not meet the required standard or did not follow the procedures set out in departmental guidelines (Drelich, pers. comm., 30/12/2002; Steele, pers. comm., 7/1/2003). The northern co-ordinator no longer attends many community conferences. Instead a

⁷⁶ After the sub-standard formal caution involving a sexual assault, described in 5.2.1, the researcher forwarded his notes to Senior Constable Lennox. Lennox no longer allocates formal cautions to the facilitator in question. This indicates that the police would be willing to act upon information gained from monitoring systems if they existed.

relatively junior member of staff in the DHHS attends as many conferences as possible and reports any concerns to Steele (Steele, pers. comm., 7/1/2003). The police officers who attend community conferences also monitor DHHS facilitators in a sense. When asked, they provide feedback to the DHHS facilitator. And since many of the authorized officers also facilitate police conferences (formal cautions) the feedback is often useful. In the southern DHHS district Lennox and other experienced police facilitators also discuss the performance of DHHS facilitators with Drelich (the southern district co-ordinator). Therefore, at least incompetent DHHS facilitators are likely to be detected.

However, the system is not ideal. First, the ambiguity concerning the co-ordinators' ability to effectively fire facilitators by ceasing to contract them is unsatisfactory. It places the co-ordinator in a difficult and embarrassing situation if the ex-facilitator makes inquiries about future work (Drelich, pers. comm., 30/12/2003). The ex-facilitator has no right of appeal and may not realize that they have been fired or why. Clear departmental policies would solidify the co-ordinators' role and arguably highlight the importance of consistent good practice to the facilitators. Secondly, many DHHS facilitators feel isolated, especially those in the northern district. In fact some have resigned because of the sense of isolation (Steele, pers. comm., 7/1/2003). From August 2000 to July 2001 the DHHS produced a facilitator newsletter. This was apparently appreciated and promoted social interaction between the facilitators as well as reporting developments in the restorative justice literature. Two support days have been held for facilitators since the system began, on December 2000 and December 2002. Both were well attended and the second involved police facilitators as well. However, two support days in three years is insufficient and evidently the co-ordinators feel much should be done to increase levels of support for facilitators (Steele, pers. comm., 7/1/2003).

The final problem concerns re-training. Other than the infrequent optional support days, DHHS facilitators are not required to complete re-training modules to maintain their positions, as occurs in NSW. Few DHHS facilitators deal with more than 10 conferences per year (Drelich, pers. comm., 30/12/2002). For this reason the details of their initial training may fade, especially after two or three years. It must also be considered that facilitators may put more effort into those conferences that are observed by a co-ordinator, consciously or sub-consciously. This means that the DHHS cannot rely solely on its monitoring systems to gauge the practice levels of the facilitators.

Re-training could ideally shift the focus away from merely preventing sub-standard practice towards a belief that facilitating is a skill that can be constantly improved. As with re-training Lennox, it would also be appropriate the DHHS co-ordinators and the senior practice consultant to undergo periodic re-training as facilitator trainers. This would reflect the fact that internationally good practice in conferencing is developing. As one academic who has recently completed a large review of restorative practices in England stated, 'We are all learning' (Young, pers. comm., 3/9/2002; see Hoyle, et al., 2002). Additionally, those new to conferencing and restorative justice who monitor community conferences, such as the Community Development Officer in the north, should be trained to understand good practice.

CONCLUSION

Implementing the *Youth Justice Act 1997* (Tas) has been a major administrative task for Tasmania Police and the DHHS. For Tasmania Police to muster enough officers to perform 'formal cautions' (most of which could be described as 'police conferences'), officers from all over the state have been required to complete training, although a small number have volunteered for the positions. The chosen officers have been provided with a two-day training course. No systematic attempts have been made to monitor the practices of these officers or maintain certain standards of competency. The current system supporting police conferences is inadequate. Conferences are vastly more delicate forums than cautions, involving the interactions between victims, offenders and supporters and the exploration of their emotions. Internationally conference facilitation is considered to require significant skills and some degree of dedication. However, the bulk of officers in Tasmania did not volunteer to be trained facilitators. The training that they completed contained many positive aspects and it has potential to become comparable to other recognized facilitator training courses. Nevertheless, the police training suffered from several serious deficiencies. Chief among these was the ambiguous coverage of reintegrative shaming. This did nothing to prevent the assumption that facilitators should directly shame offenders in a disintegrative way – a misconception that has apparently troubled other courses (Hoyle, et al., 2002; Braithwaite, J. & Braithwaite, V., 2001; McCold & Wachtel, 1998). The course provided very few opportunities for trainees to learn from role-playing. As a consequence the trainer was also unable to evaluate the skills of the trainees and to decide at this stage

whether some officers should be prevented from facilitating conferences. The difference between the legislative provisions describing formal cautions and the practices taught to the trainees was not elucidated – perpetuating confusion in the force. Nor was there any discussion of appropriate behaviour of authorized officers in community conferences. Too little attention was given to conference preparation and how to appropriately deal with allegations of police misconduct or complaints. Most alarmingly, after forcing many officers to become facilitators and providing them with an arguably deficient training course, police facilitators are not monitored, are not offered refresher courses, and are not required to prove that they have maintained standards of competency.

Building on the force's existing strengths, it could be very beneficial for Lennox to be re-trained with TJA. This would probably eradicate most of the problems that seem to exist with the current training Lennox provides. One exception is the time frame that Lennox is given to conduct the course, which would need to be lengthened from two days to at least three days for the training of new police facilitators. Re-training of already experienced facilitators by Lennox would probably take less time. Another change could be to make police conferences the sole concern of the 10% or so of officers who were attracted to the scheme. The remaining officers – and future officers who are *required* to participate in diversion – could be given the clearer and simpler task of administering cautions under the same legislative provision (*Youth Justice Act 1997* (Tas), s 9). Their training could be separate and focus on straightforward cautioning – perhaps never involving victims. In any event, monitoring systems of all police diversion practices need to be introduced. One recent positive suggestion is that DHHS facilitators could be invited to observe police conferences to provide feedback to police facilitators (Lennox, pers. comm., 7/1/2003). Whatever the system decided upon, monitoring needs to touch every authorized officer fairly often. Certainly promoting interaction between the police and DHHS schemes arguably would benefit the entire youth justice system. Measures could also possibly be taken to combine the training and support days of both police and DHHS facilitators.

The DHHS administrative systems are worrying in some respects. The one day training that most facilitators receive only covers basic aspects of restorative justice, the legislation and conferencing. Admittedly, often facilitators are trained individually and thus the training could be quite intense. However, the course lacks a specific

theoretical explanation for the effectiveness of conferencing, which some experienced commentators consider a crucial aspect of training (Moore, 2002). No role-playing has taken place. Even with the occasional extra training day – which is actually about three hours – the course does not compare well to the five day intensive training provided by TJA. Important legal issues were ignored, including the place of legal advice in conferencing, appropriately monitoring police activities, and special considerations for 10 to 13 year-olds. Neither was any practical consideration given to achieving consistency across conferences in the undertakings agreed to for similar offences. However, at least the trainees had (voluntarily) applied for the facilitator positions from a variety of backgrounds and had already been vetted to some degree by the interview process. The training also heavily emphasized the importance of face-to-face meetings when preparing conferences. Observing new facilitators first few conferences as a part of training as well as the buddy system introduced in the southern DHHS district are additional positive features.

The monitoring processes of DHHS facilitators could be improved. Processes have evolved so that at least facilitators get feedback on their performance. Serious incompetence is likely to be detected eventually, which cannot be said of the Tasmania Police system. However, unambiguous policies are needed to clarify the roles of the co-ordinators, who do most of the monitoring. Facilitators should know that the co-ordinators have the ability to effectively fire them. In this respect the facilitators' certificates that are currently distributed as a matter of course should become similar to the NSW certificates of merit. That is, each year the facilitators know that their performance will be carefully reviewed. Yet, it is not suggested that the facilitators should be in a constant state of fear. Some levels of oversight and clear ramifications for poor practice are required, but this should be balanced with other dimensions of monitoring – namely support and re-training. Compulsory re-training could easily be designed to incorporate support by building rapport amongst the facilitators, allow discussion of problems and experiences and so on. Expansion of the buddy system and restarting the facilitator newsletter would also assist in this regard. It is imperative though that those conducting the training are themselves re-trained periodically, namely the co-ordinators and the senior practice consultants. Annual or biannual re-training with a recognised group, such as TJA, would prevent restorative justice in Tasmania from stagnating and promote the influence of international good practice.

Perhaps the central lessons for restorative justice from this analysis concerns the interrelationships between the recruitment, training, and monitoring of the people who convene or facilitate restorative forums. When restorative justice is applied across an entire jurisdiction, as opposed to operating as a pilot scheme or some such, several factors should be considered. Recruitment affects training inasmuch as involuntary involvement in restorative practices is likely to decrease the efficacy of training. Involuntary recruitment is likely to increase the intensity of monitoring needed later on. Insofar as a greater number of involuntary recruits are likely to be inept facilitators (or the equivalent in different restorative processes) who will need to be replaced, involuntary recruitment also drains the resources supporting training. Training itself can form part of the recruitment process. In particular, observing trainees role-playing as facilitators can help to determine whether some of the trainees are unsuitable to conduct restorative forums. Training should be tailored to some degree towards the professional backgrounds of the trainees. That is, training should attempt to counter non-restorative influences of some backgrounds (not only policing). Trainees can be made aware of the monitoring processes and encouraged to think of facilitation as a skill that can be improved – not a formula. Monitoring can help detect weaknesses in practice and indeed the training course itself. Those involved in monitoring require training and periodic re-training to continue the flow of new perspectives and developments in good practice.

CHAPTER SIX

OBSERVATION OF FORMAL CAUTIONS AND COMMUNITY CONFERENCES

This chapter has two purposes. First, it presents practical findings on key issues in juvenile conferencing. Secondly, the chapter provides a comparison of the practices of the police and Department of Health and Human Services (DHHS) in Tasmania. The data are drawn from observations of 30 'formal cautions' (hereinafter police conferences) and 31 community conferences (hereinafter DHHS conferences).⁷⁷ The observations began in December 2000, when the new system had been in operation almost one year, and ended in January 2002. On the basis of questionnaires completed by 27 facilitators and myself, six thematic areas emerged. The first concerns some basic features of the conferences which reflected upon practice standards. These include the lengths of the conferences and the number of participants. What are the hallmarks of a typical police conference and how does this compare to a typical DHHS conference? Secondly, because the police and the DHHS facilitators were found to differ greatly in terms of the number of conferences they had previously convened, the implication of facilitator experience on abilities is explored. Conference preparation practices are the subject of the third key area. This incorporates preparation time, preparation methods, and a comparison of the facilitators' perception of preparedness. A fourth topic of discussion is the way in which facilitators explained the legal context of the conferences. Are the participants given clear information on such issues as the consequences of not completing the undertakings to which they agreed? In many ways the hardest area to address is the style of the police and DHHS facilitators. The style or approach of the facilitators is analysed in terms their management of the stages of conferences, the degree to which they imposed themselves upon the group, and their negotiation skills. The final important area is the undertakings agreed to in the conferences – what form did they take in practice and what principles appeared to influence their development?

⁷⁷ As noted previously, of the 67 conferences I observed 61 conferences were observed using the questionnaires.

The chapter has three main sections. The first section includes a description of how the questionnaires related to the six thematic areas. A detailed description of the procedure used to observe the conference is also presented. The second section concentrates upon the police conferencing practices. In addition, this section analyses two case studies that reflect on police gate-keeping practices, and to a lesser extent net-widening. The case studies are not intended to qualify the results presented in chapter four, but rather to raise issues hitherto unrecognised in the literature. Obviously the final section discusses the DHHS practices.

The reliance upon my own observations and the lack of interviews with offenders and victims are two weaknesses in the results presented in this chapter. Had resources not limited this study it would have been very valuable to know – to begin with – the rates of victim and offender satisfaction. However, unlike research projects involving observations made by multiple researchers, at least my perceptions can be treated as a relatively standard, though imperfect, gauge. Additionally, some of the quantitative data is not based upon perception but objective facts, such as the agreed outcomes, the length of the conferences, and the number of people in attendance.

6.1 METHODOLOGY

The methodology has two parts. The first describes the aspects of the questionnaires relating to each of the thematic areas, which for the present purposes the thesis will concentrate upon. Details of the procedure employed to observe the conferences are the subject of the second section.

6.1.1 Quantitative data relating to the thematic areas.

The sources of the quantitative data for this chapter were two questionnaires, the Researcher Observation Schedule, completed after each conference, and the Facilitator Survey. Appendix 6.1 provides details about the origin of the questionnaires, which were adapted from Daly et al.'s (1998) study. Appendices 6.2 and 6.3 contain the two questionnaires in full. The Facilitator Survey had two parts. Part A was completed before the conference had taken place (just after the facilitator had finished their preparation) and Part B was completed after the conference.

The basic features of the conferences were recorded in the Researcher Observation Schedule. This included the age of the offender and the length of each conference.⁷⁸ A breakdown of the number of supporters and their relationship to the offender was another important feature of the Researcher Observation Schedule. Similarly, in this questionnaire the number of victims was noted. Victims were categorised into victims of sexual or physical violence, victims of personal property crime, and victims of business property crime.⁷⁹ Finally, the *most serious* offence to which the young offender had admitted guilt was classified according to eight categories of offence seriousness derived from the IBS, the central police database in Tasmania (see 4.1).⁸⁰ The categories were as follows:

- Crimes against the person A
- Crimes against the person B
- Arson
- Burglary
- Assault
- Stealing
- Other damage property
- Crimes against good order

The first and most serious category was 'Crimes against the person A', which included such crimes as rape and aggravated armed robbery. 'Crimes against the person B' included very serious offences such as assault with indecent intent, and assault. The third category was arson. Common burglary, not including aggravated burglary, constituted the fourth category. The fifth category was 'assault' and the sixth was 'stealing'. The stealing category included motor vehicle stealing. Various forms of vandalism were included in the seventh category, entitled 'other damage property'. Finally, 'crimes against good order' included offences such as swearing at a police officer, urinating in public, and resisting arrest.

⁷⁸ Researcher Observation Schedule, questions 1 and 13.

⁷⁹ Researcher Observation Schedule, questions 9 and 12.

⁸⁰ Researcher Observation Schedule, questions 4.

The second and third thematic areas – facilitator experience and pre-conference preparation – drew on the Facilitator Survey (Part A). Amongst other things, this questionnaire asked how many conferences each facilitator had previously convened. The facilitators were asked to estimate the length of time they had spent preparing the conference. Importantly, the facilitators indicated in this survey whether they had made contact with (a) the young offender, and (b) the youth's parents or guardians. Reflecting on their preparation, the facilitators were asked to rate their level of knowledge of the youth's situation on a Likert scale of one to seven. One represented the 'basic facts of the case', three indicated an 'adequate knowledge of the youth's situation', and seven suggested the facilitator had a comprehensive knowledge of the problems facing the youth.⁸¹ A Likert scale was also used to assess the facilitators' explanations of the legal context of the conferences in the Researcher Observation Schedule. This is used to discuss the fourth key area.⁸²

Quantitative data for the fifth area to be discussed, the style of the facilitators, was based on four questions in the Researcher Observation Schedule. These addressed (a) the facilitators' control of the stages, (b) the extent to which the facilitators allowed all participants to speak, (c) the degree to which the facilitator appeared 'aligned' to one of the participants, and (d) the way in which the facilitator negotiated the undertakings. The questions required an answer on a Likert scale of one ('strongly agree') through to five ('strongly disagree').⁸³ For the final subject area, undertakings, the different types of undertakings were recorded in the Researcher Observation Schedule. The amount of money in undertakings for compensation was noted. Similarly, the numbers of hours agreed upon for a community service order was important to record. Finally, a series of Likert scales assessed the principles that influenced the development of undertakings, namely punishment, repaying the community, repaying the victim, preventing future offences, and restoring the youth's honour/self esteem.⁸⁴

⁸¹ Facilitator Survey (Part A), questions ii, v, 2s1, 3s1, and v.

⁸² Researcher Observation Schedule, question 23.

⁸³ Researcher Observation Schedule, questions 83, 84, 85, and 95; The facilitator managed the movement through the conference stages well. The facilitator permitted all the key participants to have their say in the conference. The facilitator seemed to be 'impartial', that is, not aligned with the youth, the parents, or the victim. The facilitator negotiated the outcome well.

⁸⁴ Researcher Observation Schedule, questions 56 and 57.

6.1.2 Procedure

The Commissioner of Police and the DHHS granted approval for conferences to be observed.⁸⁵ To assist in the design of the methodology, three police ‘formal cautions’ and two DHHS conferences were observed with the consent of the participants. The ‘formal cautions’ observed were clearly conducted as police conferences. Senior Constable Lennox advised that the vast majority of ‘formal cautions’ in the eastern and southern police districts were conducted this way. Consequently the decision was made to treat all formal cautions as police conferences for the purpose of the research.

The police and the DHHS agreed to provide information concerning the time and location of conferences and the contact details of the facilitators. Once contact was made with the facilitator the basic facts of the case would be discussed. In the cases where the facilitator decided to seek the consent of the conference participants the facilitator was sent a Facilitator Information Sheet (see appendix 6.4) and the Facilitator Survey (Part A). The information sheet explained the basic purpose of the study and reiterated the importance of the facilitator’s discretion concerning my presence at the conference. The information sheet provided facilitators with a script to seek the consent of the key participants. The script explained the importance of each person’s consent, that the observer would not talk during the conference, and that the observer was bound by laws concerning confidentiality. Facilitators were required to sign the information sheet to indicate that they had sought the consent of the participants. Once consent was granted and the facilitator had finished preparing the conference, the facilitator completed the Facilitator Survey (Part A).

At the beginning of the conference the conditions of the observations and the protection of confidentiality were reiterated. I sat with the conference participants within a circle or

⁸⁵ This is permitted under the *Youth Justice Act 1997* (Tas), section 15(1)(c).

around a table and did not take notes during the conference.⁸⁶ After the conference the facilitator completed the second part of the questionnaire, Facilitator Survey (Part B). This format was followed for both police and DHHS conferences.⁸⁷ The questionnaires for facilitators and police officers were returned by way of self-addressed envelopes. Immediately after the conference notes were made and the Researcher Observation Schedule was completed. Where more than one young offender was present at a conference, the youths were listed into the alphabetical order of their surnames. The Researcher Observation Schedule was then completed in reference to the first youth only.

Using this procedure 30 police conferences and 31 community conferences were observed.⁸⁸ The bulk of the conferences ($n=50$) involved one young offender. One conference involved six youths, another two conferences involved three offenders each, and a further eight conferences were convened for two offenders. DHHS conferences were held in a wide variety of public facilities, such as libraries, community centres, and often the work places of the facilitator. Police conferences were generally held at police stations in greater Hobart, although some of the larger forums were held at public facilities. All the conferences were conducted in a private room.

Initially the study attempted to observe conferences across Tasmania in the four police districts. The original plan was to observe 10 police conferences and 10 DHHS conferences in each of the districts, 80 conferences in total. Advice from conference coordinators in the DHHS as well as police officers coordinating the diversionary

⁸⁶ Most studies have chosen to seat observers away from the conference participants and have encouraged note-taking – though these details are not always reported (Young, 2001; Daly et al., 1998; see also Maxwell & Morris, 1993; Ahmed et al. 2001). There were a number of reasons for adopting a different procedure for observing conferences. Most important, it was felt that sitting with the participants without taking notes was a much more open approach that minimized the impact of my presence upon the conference dynamics. In essence it reduced the risk of the participants feeling that they were being ‘clinically observed’. Arguably, note taking is particularly distracting to participants. For instance, those participants that can see the observer may attach significance to when the observer’s writing starts and stops. Other participants may not appreciate not being able to see the researcher. Young and colleagues (Young, 2001) always placed observers behind the offender. This may have made some offenders feel uneasy. Admittedly my own non-verbal reactions were easily seen by the participants. But then to a lesser degree this still applies to observers sitting outside a conference circle. Sitting with the participants also allowed me to observe all the verbal and non-verbal subtleties of the conference. Young (2001) acknowledged that he would like to have observed the expressions of the offenders in the conferences he observed.

⁸⁷ All DHHS conferences are attended by a police officer. These officers were given the Police Officer Survey to gauge their perceptions of the DHHS facilitator. The data gathered from these questionnaires will form the basis of future academic publications.

⁸⁸ As noted, six conferences were observed without the use of the surveys prior to the development of the methodology.

practices suggested that up to six conferences of both type were conducted in the each of northern districts per week (Finegan-Foster, pers. comm., 28/3/2001; Steele, pers. comm., 10/4/2001; Snookes, pers. comm., 10/4/2001; Brookes, pers. comm., 9/4/2001). This suggested that in a four week period at least 36 conferences (police and DHHS) would be observed in the northern district and the north western district. A car was rented and accommodation was arranged in Launceston, the central city in the northern district, from the 23rd of April 2001 to the 18th of May 2001.

However, the observations in the northern districts were abandoned on the 15th of May 2001. In the preceding three weeks only two DHHS conferences had been observed and no police conferences. The exact reason for this is unclear. The main gatekeepers at the time, Sergeant David Brookes and Inspector Claus Viser, were enthusiastic about the scheme and liaised frequently with DHHS personnel to discuss gate-keeping issues. Sergeant Brookes claimed that there had been a noticeable lull in juvenile offences during late April and May. Neither the police nor the DHHS could explain the lull, other than suggesting that such a fluctuation over the course of four weeks was not significant and might have been partly due to the onset of winter.

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6.2 POLICE CONFERENCING PRACTICE

An important caveat must be outlined in relation to the results in this section. First, the police practices I observed in the southern and eastern police districts from December 2000 to January 2002 may not have been representative of practices in other districts over the same period. Implementation of the new system evidently occurred at a greater pace in the southern and eastern districts than elsewhere. It is reasonable to assume, for instance, that many of the 'formal cautions' in the north and northwest were conducted as cautions in the nationally accepted meaning of the term – a warning from a police officer. Though practices differ between officers in the south and east, generally the 'formal cautions' conducted are run as conferences – or in the very least are intended to be conferences. Despite differences that may have existed at the time of the empirical observations, Tasmania police patently intend police conferencing to be the standard format for 'formal cautions' (Commissioner's *Instructions and Guidelines*). Therefore, arguably the results presented concerning police conferences are a useful indicator of practices either existing or that may exist in the future across all police districts.

6.2.1 Basic features of police conferences

Over two thirds of the 30 police conferences observed involved males. They ranged in age from 12 to 18 years, the average age being 15 years and 8 months.⁸⁹ Females ranged between 13 to 15 years of age, with an average age of 13 years and 8 months. Table 6.1, below, shows the offences for which the police conferences were convened.

Table 6.1 Seriousness of offences dealt with by the observed police conferences

Offence seriousness category	Number of conferences involving these offences
Crimes against the person A	–
Crimes against the person B	3
Arson	1
Burglary	2
Assault	2
Stealing	9
Other damage property	2
Crimes against good order	11

No police conferences involved offences of the most serious category, 'crimes against the person A'. However, three fell into the second category of seriousness, 'crimes against the person B'. These included a sexual assault, an assault with indecent intent, and a wounding. In addition to an arson, there were also two burglaries and two assaults. The remaining 22 conferences were conducted for relatively minor matters, predominantly shop-lifting (n=9) and crimes against good order (n=11).

One police conference was conducted without any supporter for the youth. Most youths who attended police conferences were accompanied by one supporter (n=19). Of these single supporters, 15 were mothers and two were fathers. One offender attended a conference with her aunt, who seemed to be her temporary guardian. A stepfather was

⁸⁹ Three males were conferenced at the age of 18, which is permissible under the *Youth Justice Act 1997* (Tas) if the youth was 17 years old at the time of the offence (s. 3).

the sole supporter of the offender in another conference. Ten conferences involved more than one supporter for the young offender. Both the mother and the father of the offender attended eight conferences. In one conference the offender was supported by his mother and her boyfriend. On two occasions the young offender was supported by three people: (a) a mother and two sisters, and (b) both parents and a social worker. Finally, one young boy was supported at his conference by both his parents and both his stepparents.

Victims or their representatives attended 19 of the 30 police conferences. Since 10 conferences involved 'victimless' crimes, only one conference took place where the victim chose not to attend. At this conference, involving an assault with indecent intent, the victim's mother and brother attended to convey the victim's feelings. Since stealing was the most common offence dealt with by the conferences observed in the research it is not surprising that a total of 15 conferences involved business victims. Business victims were usually employees of organisations that had been affected by an offence, such as schools, insurance companies, banks, supermarkets, and department stores.

The average police conference lasted 48 minutes. One conference lasted 15 minutes. Twenty six police conferences took between 30 minutes to one hour. Only three police conferences lasted longer than an hour, two being an hour and a half and the longest lasting two hours.

6.2.2 Facilitator experience

In total the conferencing practices of 12 individual police facilitators were observed. Each time they completed a questionnaire they recorded how many conferences they had previously facilitated. Below, Table 6.2 gives a break down of police facilitator experience.

Table 6.2 Police facilitator experience in terms of number of conferences convened

Number of conferences previously convened	Police facilitators
0-5 (inexperienced)	—
6-14 (moderately experienced)	2
15-29 (experienced)	4
30+ (very experienced)	6

Quite clearly Tasmania Police is fortunate to have some very experienced officers involved in conferencing who have conducted as many as 200 conferences. Several have facilitated more than 50 conferences. As will be discussed in section 6.3, this is approximately as much as a highly active DHHS facilitator would conduct in five years (Drelich, pers. comm., 30/12/2002). Of course in some instances the officers were counting conferences that they had conducted prior to the introduction of the new system in 2000. For instance, Senior Constable Lennox, who simply recorded 'over 200' in the questionnaires he completed, counted conferences he had conducted since 1995. Anecdotal evidence suggests that a group of 15 dedicated officers across the state deal with a significant proportion of the police conferences (Lennox, pers. comm., 7/1/2003). Between the Hobart, Glenorchy, Bridgewater, and Bellerive police stations there are six part-time officers whose only role is to conduct police conferences. In addition, Lennox, who trains police facilitators, is stationed at Bellerive. These five officers each facilitate between 30 to 50 conferences per year. Some of these officers have been involved in conferencing since the late 1990s. Police officers in other stations facilitate far fewer conferences per year, between five to twelve annually. It was these officers who reported conducting fewer than 20 conferences – probably in the period of the observations, December 2000 and January 2002.

However, experience in itself is not an indicator of skill as a facilitator. Hoyle (et al., 2002) found in England that newly trained officers frequently conducted diversionary practices in a more restorative way than many of the experienced officers. As in any work place, skills can diminish, idiosyncratic practices can arise, or enthusiasm may wane.

The situation in Tasmania is aggravated by the fact that some officers are forced into conferencing, no forms of monitoring occur, and no re-training is required for police facilitators.

6.2.3 Pre-conference preparation

The length of time spent by police facilitators preparing their conferences varied from 15 minutes to a maximum of three hours, the average figure being 1.14 hours preparation. The majority of police conferences (50%) had involved one hour of preparation, as highlighted in Table 6.3.

Table 6.3 Police facilitators’ preparation time

Number of hours spend preparing each conference	Police facilitators
0.5 or less	5
1	15
2	5
3	2

As noted above (6.1.1), facilitators estimated the extent of their knowledge of the youth’s criminal record, educational history, family background, and other factors using a Likert scale of one to seven. One represented the ‘basic facts of the case’, three and a half indicated an ‘adequate knowledge of the youth’s situation’, and a rating of seven suggested that the facilitator had a ‘comprehensive coverage of problems facing the youth’. The average response for DHHS facilitators was 5.00 and for police facilitators 3.62. Four police facilitators rated their knowledge at one and another two scored their background knowledge at two.

Given that on average police facilitators considered that they had an ‘adequate understanding of the youth’s situation it is interesting that in 24 police conferences (80%) the facilitator did not have any contact with the youth prior to the conference. It appears that police facilitators relied upon contact with the parents or guardians of young offenders to prepare for conferences – this was recorded in all but three police conferences. Conversations and observations with police facilitators also indicate

that the preparation is conducted via telephone, as Lennox recommended in his training course. There were no indications that different procedures were used for victims.

Other jurisdictions have shown that participant satisfaction is dependent upon conference preparation. In New Zealand, Maxwell and Morris (1993) found that only 53% of victims were satisfied with the family group conferences they attended and one third of victims reported feeling dissatisfied with the process. Of the other participants, 80-90% were satisfied. A primary cause for victim dissatisfaction appeared to be inadequate preparation of the conferences by the facilitator (Maxwell & Morris, 1993; 2000). In keeping with this view are the findings of Palk et al. (1998) from their study in Queensland. Victim satisfaction in that study was as high as that of other participants. However, facilitators had employed face-to-face meetings with all participants in preparing the conferences. Palk et al. (1998) concluded that victims benefit from an explanation of the process and the aims of conferencing. Additionally, face-to-face meetings may reduce the chance of belligerent or inappropriate behaviour by the young offender, which can re-traumatize some victims (Palk, et al., 1998). It may be that adequate briefing for victims and their supporters is important for preventing excessively punitive attitudes.

In two conferences – drawn upon for discussion in chapter five – the police facilitator ordered the officer at the front desk of the police station to organize the conferences. This obviously represents a worst-case scenario. As noted, one of these conferences involved a sexual assault and ended badly, with the victim visibly distraught and high levels of aggression. The mother of the offender suggested that the victim had exaggerated the seriousness of the events. It was this comment that seemed to ignite aggression between the participants and the facilitator. If the facilitator had conducted face-to-face interviews with all the participants it is likely that he would have encountered the mother's view. If he had not been able to dispel her sentiments then, in the very least he would have been prepared for her comments during the conference. The other conference facilitated by this officer also ended poorly. Evidently considerable tension existed between the mother and daughter, the only participants in the conference. Even though the offence involved was very minor, the suggestion that the daughter apologize to her mother caused the mother to leave the conference room in tears. Evidently strong tensions existed between the mother and the daughter and in some way the

suggestion aggravated that tension. Arguably, face-to-face preparation would have revealed this undercurrent and avoided the upsetting outcome.

However, it is not suggested that inadequate preparation only affects rare conferences convened by unskilled and unwilling police facilitators. Rather, it is asserted that low levels of preparation create unnecessary risks to the success of many police conferences. This was most clearly observed in three conferences run by one facilitator, who had conducted over 50 conferences. The first two appeared successful – after the second the facilitator reported that ‘everyone participated and was open and honest’. The third involved a 17 year old male who had admitted to under age drinking. The police report noted that when he was apprehended he was very polite to the police. The facilitator prepared for this conference with a single telephone call to the youth’s mother. However, what ‘on paper’ appeared to be a very simple case was at one stage almost aborted because of the youth’s negative reaction to the facilitator. The facilitator later commented that she felt the youth reacted poorly to her because she was a female officer. Yet it seemed that greater preparation would have alerted the facilitator to the problem and allowed her to develop a strategy to deal with it. Instead, the 17 year old was almost sent to court and the whole conference may have damaged his perception of the police.

Luck is allowed to have too great an influence upon police conferences because of the low levels of preparation. Of course unforeseen dynamics, revelations, or events can affect any conference no matter how intense the preparation. However, even the best police facilitators are relying too heavily upon their skills to react to negative situations within the conference room. Intertwined with this practice is the apparent view of facilitators that the onus of success is upon the participants, especially the offender. For example, with the three conferences noted above the facilitator explains the success of the first two as due to the openness and honesty of the participants. The failure of the third is leveled at the sexist belligerence of the offender. However, this is an unrealistic approach to conferences which have a free flow of dialogue between the participants and the facilitator. Unlike the structured and professional atmosphere of a court, facilitators are managing human interactions. The onus of success is *shared* between themselves and the participants. A part of a facilitator’s role is to gain an understanding of the factors that may shape the interactions through adequate preparation. This includes,

amongst a myriad of possibilities, interpersonal conflict or a clash of character between the offender and the facilitator. Without even talking to the young offender on the telephone before the conference, let alone meeting them face-to-face, how can facilitators gain an understanding of quite fundamental dynamics?

Other examples of situations that could have been avoided by higher levels of preparation are worth considering. One police conference was actually terminated because of the belligerence of the two female offenders, who were cousins. These girls were diverted to the DHHS conferencing scheme. The DHHS took the simple step of dealing with the girls in separate conferences, both of which were successful. A more dramatic conference was noted previously in chapter five, after which the stepmother of the offender lost her job. This conference involved an assault with indecent intent. Present were two members of the victim's family, the offender, five supporters, and myself. The facilitator had spent three hours preparing this conference – an enormous investment of time by police standards. Yet clearly three hours was not enough; the step-mother claimed she did not understand the legal context of the conference – that her stepson has admitted to the offence – and lodged bitter complaints to police authorities. Without a proper understanding of the purpose of a conference how can a conference participant give a true consent? A different facilitator spent half an hour preparing a conference which concerned a stabbing in a high school brawl. Had the officer met the participants she would have learned that the 'offender' had been intimidated and attacked by the 'victim' and his friend. The lack of preparation had two consequences. First, the officer mistakenly invited the victim's friend and his father, even though the friend had not been affected by the offence and clearly had a negative impact on the proceedings. The victim and his friend, tough and confident, were able to visibly intimidate the offender during the conference. Secondly, the facilitator had to react to these dynamics as they quickly became evident during the conference. She eventually asked the friend and his father to leave the conference. Later, the victim and his father were asked to leave as well so that the facilitator, the school principal, the offender and his mother could discuss the offender's anxiety disorder, insomnia, and his perilous habit of carrying a small pocket knife for 'protection'. Other complexities were evident that cannot be discussed here. Patently, significantly more preparation was needed in this case. A final example concerned petty theft by a 17 year old male. This was the only 'conference' conducted without any supporters or a victim. The

facilitator explained to me that it was difficult for her to arrange a time with the participants because of her irregular part time shifts and that the parents of the offender worked full time. A representative from Coles-Myer, the business-victim, was supposed to attend. The facilitator mentioned that 'Coles always forgets'.

The quandary facing Tasmania Police appears to be that it wants to conduct juvenile conferences, not cautions, and yet the force simply does not have sufficient resources to devote sufficient time to preparation. Research suggests that face-to-face preparation with all participants is extremely important – both for the success of the forum and to avoid negative consequences (Palk, et al., 1998; Maxwell & Morris, 1993). This most obviously applies to serious crimes, which police conferences in Tasmania deal with often. It is also argued that conferences for minor crimes need face-to-face preparation to uncover tensions and dynamics. Without this there is an excessive reliance upon the skill and experience of facilitators to deal with serious problems when they occasionally arise. The nature of conferences leaves them open to the influence – positive or negative – of anything affecting the participants' lives. There is no way of foretelling when this might occur on the basis of the charge or police report. The majority of officers reported having an 'adequate knowledge of the youth's situation' before they facilitated each conference. It is respectfully suggested that too often this was an optimistic appraisal of the situation.

Apart from not meeting the participants and rarely talking to young offenders, other aspects of police conference preparation were positive. The *Youth Justice Act 1997* (Tas) only requires that a guardian or responsible adult attend each formal caution. Only one police conference was held without a supporter for the youth. This conference involved a very minor theft by a 17 year old male. One or two guardians and sometimes extra supporters attended all other conferences for the youth. Efforts were made to attract victims to participate in conferences. Victim representatives were sought where the victim was unable or unwilling to attend, or where the 'victim' was a business. At the very least this indicates that police were genuinely interested in convening conferences. That is, conferences were not simply held if they were easy to organize.

The efforts to include victims arguably indicate that the facilitators were interested in successful, restorative conferences. However, it is suggested that too little attention

was placed upon inviting people to the conferences with whom the offender had a special relationship. Too frequently conferences were held with only one supporter for the offender – in most cases the offender's mother. This does not meet with accepted standards of good practice. It simply cannot be assumed that the parents or guardians of the youth have a relationship that will positively affect a conference. Indeed, facilitators must be aware of the possibility that the relationship is entirely negative and even related to the youth's criminal behaviour (Sandor, 1993). The restorative literature points to the importance of discovering who matters to the offender in the conference preparation stage (Braithwaite, 1989; Ahmed et al., 2001). Furthermore, there are good reasons to believe that without significant others present conferences are less effective at inhibiting recidivism (Maxwell & Morris, 1999; Braithwaite, 1999).

6.2.4 Explanation of legal framework of conference

Generally the police facilitators gave good introductory explanations of the legal framework of a conference, or technically a 'formal caution'. One exception was the police sergeant now discussed several times for his poor practice standards. He provided no explanation at all in one conference. In 20 conferences facilitators appeared to give a full explanation of legal issues, including consent, confidentiality, court, evidence of prior offending history, criminal records, and the relevance of the undertakings.

In the remaining nine conferences, two issues arose. On three occasions the facilitator did not explain that the conference was supposed to remain confidential. This seemed to be merely due to a lapse of attention on the facilitator's behalf. But in all nine conferences there was no explanation of the legal consequences of non-compliance with the undertakings agreed upon. Unlike DHHS conferences, if a young offender does not complete the undertakings agreed to in police conferences the matter is not referred to court. In reality the main implication for non-compliance with the agreements of a police conference is that it may discourage the police from offering diversion to the youth if they offend again. In one sense it is understandable that officers did not highlight this fact in case it tempted the youth to not comply or undermined the importance of the conference for all the participants. However, it is submitted that to omit to explain the consequences is deceptive and unfair to the youth. If the youth later believes that they were misled this may cause resentment and ill feeling towards the

police. In any case, arguably a restorative police conference should inspire young offenders to complete their undertakings. Clearly unacceptable, however, were the three instances where the facilitator’s introduction distinctly gave the impression that non-compliance would lead to court action. These police facilitators may have been confused about the true legal situation because of the incorrect statement in the Police Commissioner’s *Instructions and Guidelines*, that undertakings reached in a formal caution are enforceable at court (see 3.3). The issue of unenforceability was evidently a sensitive one with many facilitators. Lennox had made formal applications to his superiors for the *Youth Justice Act 1997* (Tas) to be amended to rectify the situation (Lennox, pers. comm., 24/4/2001).

6.2.5 Facilitation style

The police facilitators were rated on fundamental skills of conference facilitation: management of conference stages, dominance, impartiality, and negotiation skills. The four skills were rated on a scale of one (‘strongly agree’) to five (‘strongly disagree’) corresponding to four questions. Table 6.4, below, displays the mean ratings on the questions.

Table 6.4 Mean ratings for police officers on facilitator skills

Facilitation skill	Mean rating on scale of 1-5 (where 1= strongly agree, 5= strongly disagree)
The facilitator managed the movement through the conference stages well.	1.8
The facilitator permitted all the key conference participants to have their say in the conference.	1.83
The facilitator seemed to be impartial, that is, not aligned with the young person, the parent(s), or the victim.	2.7
The facilitator negotiated the outcome well.	2.30

On average police facilitators performed quite well in their ability to manage the transition between the main ‘stages’ of the conference. (For example, from the discussion of the impact of the crime to consideration of how the youth could repair the harm they caused.) However, their ratings were dispersed. Whilst there was a strong

core of police facilitators (n=20) who were rated at one or two, five facilitators were rated at three and another five facilitators were rated at four and five. Generally facilitators did not dominate the conference proceedings and permitted at least the key participants to contribute to the discussion, as the mean rating of 1.83 suggests. However, the mean rating for impartiality was not as strong (2.70). Once again the average rating was affected by one third of conferences (n=9) where I 'disagreed' or 'strongly disagreed' that the facilitator was impartial. Regarding the often difficult task of negotiating the sanctions the mean of 2.30 suggests that generally the facilitators seemed capable. For well over half the conferences I 'strongly agreed' (n=5) or 'agreed' (n=16) that the facilitator had negotiated the outcome well. Once more it is relevant to note the police sergeant who was observed twice. One of his conferences was given the lowest possible rating ('strongly disagree') for all of the four facilitator skills.

Police facilitators differed considerably in their conferencing styles. Lennox was one of the best facilitators observed in either the police or DHHS schemes. His style was consistently gentle, unhurried, democratic, and impartial. Lennox appeared to minimize his presence during the conference, generally participating only to *facilitate* appropriate interaction within the group. He used a variety of techniques to overcome problems. For instance, Lennox was the only facilitator who initiated a coffee break during a conference to overcome a tense deadlock between participants. Finally, in dealing with undertakings he encouraged group decision making and offered his own suggestion in an unimposing manner.⁹⁰ Four other officers were also impressive facilitators, especially in the sense that they did not impose a police perspective upon the conferences (see Young, 2001). One of these facilitators twice had to deal with dissatisfaction with police conduct and seemed to do so in an impartial way that satisfied the participants.

However, the conferencing styles of some of the facilitators – even experienced ones – did not seem conducive to restorative justice. The worst police facilitator, referred to repeatedly above, at one stage explained that his job was to put criminals 'behind bars', but that if he could dissuade the youth away from a life of crime then the process was useful. The youth had stolen a bottle of shampoo. He also noted that in the eyes of the law it did not matter if one dollar was stolen or one million and the courts could sentence

⁹⁰ For instance, Lennox once introduced his own idea for an undertaking this way: 'I'm going to throw an idea into the circle and we can chat about it'.

thieves for up to 21 years imprisonment. He later related to me that he used these comments, which are clearly misleading, to make youths recognize the seriousness of shoplifting. The stigmatizing subtext of these comments – implying that the youth's whole life was on a knife's edge – are similar to those made by police facilitators in Young's (2001) research. This facilitator also (a) arranged for another officer to 'prepare' the conferences, (b) conducted the conference in cramped conditions, (c) lost his temper with a participant, (d) failed to sensitively seek basic agreement between the participants as to the facts, and (e) did not progress through the conference with any structure but oscillated between completely different issues.

No other facilitator possessed such a collection of sub-standard practices. However, there were consistent issues arising with four other facilitators, including two who had facilitated over 50 conferences each. One of the experienced officers had a personable style which, nevertheless, tended to easily become directive and intense. She inevitably became the centre of the proceedings. Despite being fair, with her strong personality and bluntness it was not surprising when an offender in one conference reacted belligerently towards her. She facilitated another conference with a pistol on her belt – an unintentional but arguably powerful sign to the participants that the facilitator was a police officer first and a facilitator second. The other three facilitators were similar in terms of being overly directive and not empowering the participants. At times these four facilitators were defensive about police procedures. Another apparent fault of these facilitators was to conduct conferences expeditiously, curtailing discussion especially of undertakings. It appeared that this was sometimes due to time constraints. The conference process was occasionally portrayed as a quasi-judicial one. For instance, in the worst cases police facilitators simply told the offender what they should do, with phrases such as:

'I'm not going to fine you, but what I'll get you do is...'

'You would've got a punishment from court, so you're not going to get away scot-free here.'

'I want it done by the weekend.'

6.2.6 Undertakings

As noted previously (3.4), police 'formal cautions' can result in (a) compensation for the injury suffered or expenses incurred by victims of the offence, (b) restitution, (c) an apology to the victim, (d) up to 35 hours community service, and (e) an undertaking to do anything else appropriate in the circumstances. Only four conferences involved compensation – \$5, \$7.50, \$70, and \$525 respectively. The latter two sums were agreed upon with the clear involvement and financial backing of the offender's parents.⁹¹ Other than apologies that occurred naturally during the conference, eight conferences included an undertaking to write a formal apology to the victim, including some department stores. Community service orders formed part of the agreement in three police conferences only. The hours specified were for five, eight, and sixteen hours respectively. The purpose of the first two community service orders was to complete a counselling program.⁹² The 16 hour order included five hours to help the cleaners of a school repair the damage caused by the offender's arson and 11 hours for a course on fire danger. Other miscellaneous undertakings included (a) a father and son to sand a wooden fence vandalised by the youth, (b) 1.5 hours of cleaning, (c) to 'be good' at home for 1 month, (d) to help family friends move house, (e) to read pamphlets on alcohol abuse, and (f) not to go near a specified pub for three months.

In question 57 of the Researcher Observation Schedule the principles which appeared to guide the formation of the undertakings were recorded. This question asked:

In deciding upon the outcome how much did the conference take into account the principles of:

- Punishment (a penalty imposed upon the young person to punish)
- Repaying the community
- Repaying the victim
- Preventing future offences (to help avoid re-offend)
- Restoration (a penalty – but to restore the young person's honour/esteem)

⁹¹ The \$525 sum represented a fraction of the cost of the vandalism of a school.

⁹² The program, termed 'Change is Your Choice', focussed on teaching youths about decision making and assertiveness in overcoming peer pressure.

For each of these five principles I rated the conference on a Likert scale of one ('not at all') to four ('to a high degree'). Very few of the police conferences ($n=5$) seemed at all concerned with incorporating into the undertakings some means for the young offender to repay the community, symbolically or materially. This was very different from the DHHS conferences, as discussed in 6.3.⁹³ Notions of punishment were not evident at all in 18 of the police conferences. While the remainder ($n=12$) were influenced in some degree by notions of punishment, none were heavily influenced by this notion.

Restoring the youth's honour appeared to be a relevant concern in two thirds of police conferences ($n=19$). In the 20 police conferences where a victim was identifiable some consideration was given to ways in which the youth could recognise the damage caused to the victim. In six police conferences quite a high priority was placed on preventing future offences.

Many commentators oppose procedures where police officers determine sanctions for offenders (White, 1994). Tasmania is one of a few jurisdictions in the world where officers have the power to impose a sanction upon a young offender. South Australia is another. As noted in chapter three, this police power does not seem to be in keeping with the *Beijing Rules*. Supporters of police run conferences would argue that the sanctions are not imposed but agreed to in a restorative way, however, it has already been noted above that some police facilitators do not operate this way. In any case, it is questionable whether most youths genuinely feel free to reject suggestions from officers in the majority of cases where ostensible agreement is reached (Sandor, 1993). Nor is it relevant to point to the fact that sanctions from police conferences are unenforceable when it seems that this fact is rarely made clear to youths. In this context it is encouraging to see that the undertakings agreed to in police conferences did not appear to be too onerous – although future research will need to compare the outcomes of conferences with court sentences. It was noted above that four facilitators in particular arrived at undertakings in an authoritarian or directive manner. However, for the most part the intentions of the police facilitators appeared to be driven by considerations of the young offender's honour/esteem, of victims, and of preventing future offences. Punishment was not an important theme in the police conferences.

⁹³ The difference between the police and DHHS conferences was statistically significant ($t(58, 0.23)=4.32, p<0.01$).

This absence of a punitive approach may partly be explained by the fact that police conferences tended to deal with more minor crimes, such as the 10 conferences involving crimes against good order. Motivation to keep undertakings relatively light may also come from the fact that the undertakings agreed to in a 'formal caution' are not enforceable at court. Another factor might be the police facilitator training, which, to Lennox's credit, emphasized restoration over punishment. Lennox also encourages officers in the training to avoid onerous sanctions so that the youth can complete the undertakings. Lennox commented that a sense of closure is important for the youth, so that it is preferable for a youth to complete an easy undertaking than to fail an onerous one. One officer had a slightly different perspective. He would attempt to avoid undertakings altogether if he perceived that the offender's family would not offer any support. Thus this officer suggested undertakings only where there seemed to be sufficient family support and a likelihood of completion. It must also be considered that police officers probably have a good knowledge of the types of sanctions that offenders would have received at court. Perhaps this knowledge encourages police facilitators to view minor sanctions as reasonable for minor crimes. A number of these issues reveal police concern for young offenders. This, together with the fact that no mention was made of offenders repaying the community in 25 police conferences, provides a clue to their notion of restorative justice. That is, it is suggested that police facilitators are offender-oriented in conferences. As discussed in chapter one, offender-oriented perspectives of restorative justice can view victims and indeed victim reparation as important factors in reducing the chance of the youth re-offending. At least, this has been a criticism of reintegrative shaming and the Wagga model of conferencing – both of which heavily influence police conferencing in Tasmania. Thus, a slightly more complex reason for the lighter undertakings agreed to in police conferences may be their perspective of undertakings. Symbolic or small acts of reparation to victims may be considered sufficient for the purposes of rehabilitating young offenders. Community reparation may not be viewed as useful to this end at all and therefore is not sought.

6.2.7 Police gate-keeping – issues arising from two case studies

One police conference and one DHHS conference are worth discussing briefly for the issues they raise concerning gate-keeping. The police conference involved two youths who had spray painted their neighbours' fences. The morning after the offence one of

the boys and his father were prepared to visit the three neighbours, apologize and completely clean the mess created. However, a police officer prevented them, stating that they were not to talk to the victims because the issue would be dealt with at a police conference. At the conference one of the victims stated that she was very angry that neither of the boys even came to apologize to her. In the three weeks leading up to the conference she said she felt increasing anger each time she drove past her fence. The conference ended very well. Both boys apologized and the father and son mentioned above offered to sand back the victim's fence. The victim's anger was turned away from the offenders towards the police for delaying this outcome. It is argued that in this situation the police officer should have recognized that restoration for the victims and restoration of peace within the neighbourhood was achievable immediately. Certainly this requires sound judgement. Yet, in this case rigidly processing the issue through a police conference created unnecessary tension between those involved as well as sapping police resources. In this case it could be argued that a form of net-widening occurred. Some restoratивists maintain that net-widening can sometimes be good, especially if it causes otherwise ignored injustices to be addressed (Braithwaite, 1999). This case study is an example of how net-widening can counter the aims of restorative justice. That is, by dealing with a case through a restorative forum instead of informally and spontaneously, the victim's injury was aggravated and the restoration of community harmony was delayed unnecessarily.

In the DHHS conference, a 17 year old male had failed to pay for five dollars worth of petrol at a petrol station. On the day of the offence a police officer took the offender from his home to the petrol station and made him apologize to the owner and repay the money. Evidently the offender had a prior offending history and for this reason the matter was sent to a DHHS conference. Without further knowledge of the prior history, this case appears to have been a form of net-widening. That is, an officer had dealt with the minor offence unofficially but effectively and yet the youth was sent to a conference thereby lengthening his recorded offending history. Very few of the emotions that seem to be important for restorative justice, such as remorse or shame (see Maxwell & Morris, 2000; Harris, 2001; Braithwaite, 1999), appeared in the conference, arguably because the main participants felt the 'damage' had been minor and repaired over one month before the conference.

Another reason why the five dollar theft seemed so insignificant was that during the conference it was revealed that the youth had since been charged with burglary. This fact appeared to seriously impede the conference. Neither the youth nor any of the other participants could feel that the conference marked a chance for the offender to 'begin again' because more serious issues had yet to be dealt with. In four other DHHS conferences it was revealed that the youths concerned had other matters pending. Quite possibly there were other conferences where such facts were not mentioned. From the viewpoint of affect theory it is difficult to imagine how young people can reach a state of excitement or interest in the outcomes of one conference if they know that other offences are yet to be dealt with (see Moore & O'Connell, 1994). Such revelations within a conference could equally extinguish the optimism of others or may even stigmatize the offender. For these reasons it is argued that when a youth has admitted to another offence after a conference has been arranged, the youth's situation should be reassessed. The police should contemplate dealing with both offences in one conference. Where the youth has not admitted guilt to the second offence and the second matter is proceeding to court, no mention should be made of the issue in the conference to avoid prejudicing other participants against them.

6.3 DHHS CONFERENCING PRACTICES

6.3.1 Basic features of DHHS conferences

The 31 DHHS conferences observed involved 21 males, with an average age of 13.5 years, and 6 females with an average of 15 years and 10 months. Table 6.4, below, displays the offences for which the conferences were convened.

Table 6.5 Seriousness of offences dealt with by the observed DHHS conferences

Offence seriousness category	Number of conferences involving these offences
Crimes against the person A	–
Crimes against the person B	1
Arson	4
Burglary	–
Assault	3
Stealing	17
Other damage property	5
Crimes against good order	1

There were eight serious offences: an aggravated assault, four arsons, and three assaults. The remaining 23 conferences concerned stealing (n=17), vandalism (n=5), and crimes against good order (n=1). The offences that the DHHS conferences dealt with tended to be more serious than those dealt with by the police, although this is not immediately apparent by comparing Table 6.5 with Table 6.1. However, it is clear the police processed many more crimes against good order. More important, a number of the DHHS conferences dealt with very serious circumstances. For instance, of the arson cases three conferences related to the same incident where three youths caused \$80,000 worth of damage to a business. One of the stealing offences involved a \$1000 forged cheque. Further, three of the vandalism cases involved damage of over \$3000. None of property offences dealt with by way of a police conference involved property of this value.

DHHS conferences were quite similar to police conferences in terms of the number of supporters that attended. Unfortunately three conferences took place without any supporters for the youth. Most commonly the youth brought one supporter (n=16). The remaining DHHS conferences involved two supporters (n=5), three supporters (n=6), or 4 supporters (n=1). Again, as with the police practices, mothers were the most common type of supporter for youths (n=21), followed by fathers (n=7). However,

welfare professionals attended DHHS conferences in greater numbers ($n=7$) than in police conferences ($n=3$). Of these, two included two and three welfare professionals respectively.

At least one victim participated in 27 of the DHHS conferences. This number is higher than that of police conferences ($n=19$), though this may be attributed to the large number of 'victimless crimes' that the police conferences dealt with ($n=10$). Victims attended for all of the eight serious crimes listed above. The remaining 23 conferences were attended by victims of personal property crime ($n=11$) and victims of property crime affecting businesses, schools and the like ($n=12$).

DHHS conferences varied in length from 30 minutes to 2.5 hours, the average length being 73 minutes. The bulk of the conferences ($n=25$) lasted between 60 minutes and 90 minutes.

6.3.2 Facilitator experience

In the majority of DHHS conferences the facilitators were quite new to the job. Twice I observed the first conferences conducted by a facilitator. Over the year of conference observations the facilitators gradually accumulated experience – gradual in comparison to the police facilitators since at most a DHHS facilitator deals with 12 conferences per year.⁹⁴ Insufficient observations were made to statistically assess whether a learning effect took place for the facilitators.⁹⁵ Clearly the DHHS facilitators were far less experienced than the police facilitators, as presented below in Table 6.6. This had an impact on their facilitation abilities, as discussed below in 6.3.5.

⁹⁴ The one facilitator who reported dealing with 20 conferences previously was actually an ex-police officer and had been involved in police conferencing before 2000.

⁹⁵ It might be reasonably anticipated that the DHHS facilitators will improve their skills over time, though such a conclusion needs to be treated with caution (see Hoyle, et al., 2002).

Table 6.6 DHHS facilitator experience in terms of number of conferences convened

Number of conferences previously convened	DHHS facilitators
0-5 (inexperienced)	7
6-14 (moderately experienced)	5
15-29 (experienced)	3
30+ (very experienced)	—

6.3.3 Conference preparation

The contract fee for DHHS facilitators is calculated to cover up to 10 hours of preparation, including meeting the participants, travel time and so on. Currently, the DHHS does not distinguish between the complexities of different cases. In one sense this appropriately recognizes that complexity cannot be gauged by the basic facts available to the DHHS coordinators. It is also impossible to predict when conference preparation will be affected by a wide variety of mundane delays.

DHHS facilitators spent much longer preparing their conferences (9.35 hours on average) than did the police facilitators (1.14 hours on average). A breakdown of the time that the DHHS facilitators reported preparing their conferences is shown in Table 6.7, below.

Table 6.7 DHHS facilitators' preparation time

Number of hours spend preparing each conference	DHHS facilitators
0-3	0
4-6	10
7-9	5
10-12	6
15-26	5

As Table 6.7 indicates, DHHS facilitators reported spending between 4 to 26 hours preparing their conferences. The shortest time, four hours, was still longer than the preparation spent by any of the police facilitators. In nine instances the DHHS facilitators spent 10 hours or more preparing conferences. Some facilitators were prepared to spend considerably more than 10 hours preparing conferences, which is arguably strong evidence of dedication and enthusiasm. In practical terms it seems the major difference between the DHHS and police facilitators lay in the way that they briefed the participants. Whereas the police relied upon phone calls to parents, all of the DHHS facilitators reported having contact with the young offenders and the parents. Conversations with DHHS facilitators before and after conferences strongly suggested that face-to-face meetings were standard practice for briefing the young offender, their parents, and victims.

As noted, the facilitators estimated the extent of their knowledge of the youth's criminal record, educational history, family background, and other factors using a Likert scale of one to seven. One represented the 'basic facts of the case', three and a half indicated an 'adequate knowledge of the youth's situation', and a rating of seven suggested that the facilitator had a 'comprehensive coverage of problems facing the youth'. The average response for DHHS facilitators was 5.00 and for police facilitators 3.62. This difference was not statistically significant⁹⁶ which could be partly attributed to the optimistic appraisals of preparedness given by the police officers. Certainly the DHHS facilitators seemed to be better prepared for conferences than the police facilitators. In DHHS

⁹⁶ $F(54.50,55)=1.27, p=0.27$.

conferences there were fewer incidents that indicated inadequate preparation – such as the wrong people being invited or participants not understanding the basic legal premise of a conference – than occurred in some police conferences.

However, the results indicated that there were no differences between the numbers of people present at DHHS conferences and police conferences. This appears to be because of the perception of good practice in the DHHS. In the training courses, such as they are, and manuals, references are made to inviting the parents or supporters. A second influence upon facilitator practice appears to be a reluctance within the DHHS to invite too many people to conferences in case the offender or the victim are intimidated, or in case the number of participants becomes too difficult for the facilitator to handle. In particular, the DHHS facilitators appear to be concerned with youths being intimidated by their own supporters. Facilitators are right to be aware of this possibility. But the concern becomes counter productive if it means that facilitators seldom invite more supporters than the youth's parents or guardians. As discussed above, effective conference preparation involves discovering which adults have a strong and positive relationship with the offender. The youth's relationships with their parents may be troubled. Other adults – not just from the extended family – may be able to offer particular solutions to prevent future criminal behaviour, to help the youth at school, provide practical support for the youth's family and the like (see Braithwaite, 1999; Wundersitz, 1996b; Maxwell & Morris, 1993).

Qualitative observations support these arguments. Two conferences that were observed concerned the same youth. In the first conference the mother, who was the youth's only supporter, admitted that she had taken her son to an apartment store to steal for her. She also admitted that she needed help with budgeting and with overcoming alcoholism. In the second conference once again the mother was the youth's only supporter. She was seen at the scene of son's second shoplifting offence drinking alcohol. This time the mother denied any involvement and expressed her disappointment in her son. The 14 year old youth discussed his learning disability, how he hated being teased at school and how he strongly desired to live with his father in the bush, out of town. Superficially the father seemed to be an important figure for the youth and may have had a positive influence on either conference. Greater efforts in conference preparation may have identified other people who could have offered genuine and lasting support to the

boy and his mother in different ways. Instead the outcome of the second conference was for the youth to write a letter of apology to the shop owner, attend a program to help him with his schooling, and promise not to offend for three months. Three DHHS conferences were conducted without any supporters at all. In one of these conferences the youth admitted that he had prevented the facilitator from reaching either of his parents because he wanted to hide the offence from them. In a similar vein, a facilitator was almost persuaded by an offender not to invite any of his extended family to his conference because he was embarrassed about the nature of the offence – physically assaulting his mother. That the facilitator contemplated complying with his wishes arguably indicates that the facilitator was unsure as to the role of supporters as well as ignorant of the importance of emotions such as remorse or guilt-shame in restorative justice (Maxwell & Morris, 1999; Harris, 2001).

Sixteen conferences included one supporter for the offender. In nine of these the sole supporter clearly seemed to offer inadequate support: (a) a mother who stated that she ‘did not get along with her son’, (b) a grandmother who felt lumbered with her guardianship and simply stated that she never knew where her grandson was, (c) a 15 year old friend of a 17 year old offender, (d) a brother-in-law, (e) a 16 year old sister of a 13 year old offender, (f) a father who was drunk at the conference, (g) a recent girlfriend of the offender’s father, and (h) the two conferences involving the alcoholic mother mentioned above. In another conference the 15 year old offender had been ejected from her mother’s home and was living temporarily with a school friend. The school friend and her mother attended the conference to support the offender. Their contributions were jovial and supportive – the facilitator later describing the supporters as a ‘cheer squad’. However, from my perspective this young woman needed adults with long standing positive relationships to remind her of her self worth during the conference and to possibly solve her housing crisis. The police officer who attended this conference shared similar concerns. Admittedly, it is unclear how often the lack of supporters was beyond the facilitators’ control. However, it is submitted that the quantitative and qualitative data indicates that facilitators did not always make sufficient efforts to discover a sound community of concern.

6.3.4 Explanation of legal framework of conference

DHHS facilitators gave a full explanation of legal issues, including consent, confidentiality, court, evidence of prior offending history, criminal records, and the relevance of the undertakings in 23 conferences. In the remaining cases one or two of these issues were omitted. The most common topic omitted was the confidential nature of the process. Obviously confidentiality is important to avoid negative repercussions after the conference. But emphasizing confidentiality must surely also encourage participants to be open about events and feelings. Twice facilitators also failed to remind the youths that they could leave the conference at any stage and that their voluntary agreement was necessary for undertakings.

6.3.5 Facilitation style

The DHHS facilitators were rated on fundamental skills of conference facilitation: management of conference stages, dominance, impartiality, and negotiation skills. The four skills were rated on a scale of one ('strongly agree') to five ('strongly disagree'). Table 6.8, below, displays the mean ratings for the four skills given to DHHS facilitators.

Table 6.8 Mean ratings for DHHS facilitator skills

Facilitation skill	Mean rating on scale of 1-5 (where 1= strongly agree, 5= strongly disagree)
The facilitator managed the movement through the conference stages well.	1.9
The facilitator permitted all the key conference participants to have their say in the conference.	1.48
The facilitator seemed to be impartial, that is, not aligned with the young person, the police officer, the parent(s), or the victim.	2.16
The facilitator negotiated the outcome well.	2.14

The DHHS ratings were similar to the police facilitators on fundamental skills of conference facilitation; no differences were found at the 0.10 level of significance for any of the scales. Perhaps the DHHS facilitators greatest strength was in facilitating without

dominating proceedings. They were also adept at gently moving the conference from stage to stage and seemed to choose appropriate times to do so. Generally the facilitators came across as impartial. However, there were four conferences where the facilitators intimated that they were on the 'side' of the victim. Finally, the DHHS facilitators were rated well on their ability to negotiate the undertakings between the participants.

Five of the fifteen DHHS facilitators observed appeared to bring a great deal of skill to their new positions in terms of managing interactions and talking about sensitive issues. These facilitators seemed particularly adept at dealing with negative emotions whilst avoiding conflict, empowering participants, drawing out important issues, and encouraging a natural development of discussion towards restoration. A further six facilitators appeared competent but perhaps stilted and less confident in their new roles. One facilitator, described in chapter five, bought a particular theory to conferencing, called narrative theory, that worked well in two conferences but disastrously in the third. Two facilitators were observed employing substandard practices that appeared to be attributable to inadequate training. The first was slightly directive and began his conference with the statement that the 'whole process should take 25 to 30 minutes'. The other tended to work too closely with the authorized officer who attended her conferences, which will be discussed below. This facilitator was directive to the point of aggression, despite her background in social welfare. In one conference she firmly told an embarrassed offender 'take your hand away from your mouth'.

However, overall the DHHS facilitators' abilities appeared to be equivalent to the police facilitators'. The instances of sub-standard practice observed in the DHHS conferences were far less serious than the worst cases observed in the police conferences. How can this be explained when the DHHS facilitators were (a) obviously far less experienced in conference facilitation and (b) received shorter training than the police facilitators? Four factors can be pointed to. First, the DHHS facilitators came from a pool of professions that possibly equipped them well to facilitate conferences and they were able to grasp the essential elements of conferencing quickly. Secondly, none of the DHHS facilitators were 'obliged' or forced into conferencing. Notably, the worst police facilitator fell into this category. Thirdly, the DHHS long pre-conference preparation time and face-to-face briefings with the main participants probably increased their ability to manage the

human interactions that occurred. Finally, conferences may have become ‘routine’ for the experienced police facilitators. As experienced elsewhere (Hoyle et al., 2002), it may be that the inexperienced DHHS facilitators tried harder to follow their conference scripts.

One relatively minor issue concerned the seating of conference participants around tables by DHHS facilitators. This use of tables occurred in 13 DHHS conferences, as opposed to one police conference. Two facilitators told me that they deliberately used tables for particular reasons.⁹⁷ However, though mostly the facilitators appeared to have a seating plan, often the use of tables seemed accidental, depending on what furniture happened to be in the room the facilitators had booked. The tables often presented a barrier between the participants – certainly in terms of body language. Rectangular tables sometimes made it difficult for participants to see each other. Three conferences were held around very large tables designed for meetings, which gave an unhelpful formal tone to the proceedings.⁹⁸

All of the DHHS facilitators generously encouraged participants in the ‘breaking of bread’ after the conference. Often facilitators spent quite a lot of money providing refreshments and some facilitators baked food for the occasion.⁹⁹ The potential of the informal period after the conference was highlighted in several cases. In one conference, a family with a long history of conflict with the police initiated an involved discussion with a sergeant about working together to help their son.

6.3.6 Undertakings

Like police conferences, DHHS conferences can result in undertakings for compensation, restitution, community service orders, an apology, or anything else appropriate in the circumstances. However, unlike police conferences, DHHS

⁹⁷ The first facilitator placed some sort of object on the table within easy reach of the offender. The offender could touch this object at any stage to give the facilitator a secret signal that they wanted a break in the conference proceedings. The second facilitator sometimes gave the participants butcher paper to write down suggestions for undertakings.

⁹⁸ In two of these conferences the offenders and their supporters sat at one end with all the other participants at the other, making the conferences seem more like a panel.

⁹⁹ Part of facilitators’ payment accounts for food and drinks after conferences.

conferences can impose up to 70 hours community service and, importantly, if the youth does not fulfil the undertakings the police can refer the matter to court.

Two of the 31 DHHS conferences resulted in compensation – a donation of \$7.50 to a charity of the offenders' choice.¹⁰⁰ Written apologies were agreed upon in seven instances. Restitution of a stolen bicycle was made in one conference. Other practical outcomes included washing cars, painting a bookcase, and laybying a stolen item of clothing. Seven conferences involved welfare programs, such as counselling, anger management, fire danger awareness, and assertiveness training.

Most significantly, 18 of the 31 DHHS conferences included community service orders – with eight substantial undertakings of 20 to 70 hours of service. It is worth describing these eight undertakings. As noted above, three boys aged 11 to 13 years had caused \$80,000 worth of damage to a business through arson. Two of boys agreed to 70 hours community service. This included 64 hours working at the business, which sold second hand items from a rubbish tip, and 6 hours completing a course on the dangers of fires run by the fire brigade. The third boy agreed to 54 hours work at the tip shop in addition to the course. In another conference a 15 year old girl agreed to 50 hours to complete a vocational training course in hospitality. This was the wish of the victim, a family friend, from whom she had stolen \$1000. A different girl, guilty of three counts of shop-lifting from one clothing store, agreed to 40 hours work at the store – which the group agreed would help the victim and provide the offender with useful work experience in sales. Vandalism of a football club resulted in an agreement for the 16 year old male to spend 30 hours cleaning the premises. One boy, aged 12, who had committed three petty offences in his neighbourhood, agreed to 12 hours gardening with a charitable organisation, 8 hours painting a mural on a toilet block under supervision, and 5 hours delivering community information pamphlets. Finally, participating in ruining a stolen car led to an agreement for a 15 year old male to perform 20 hours helping his regional council clean the town centre. Clearly these undertakings are more onerous than those observed in the police conferences. This will be discussed shortly.

¹⁰⁰ These two conferences involved the cousins referred to previously (6.2.3) who had stolen a jacket together but were conferenced separately.

Ratings from the Researcher Observation Schedule clearly suggested that different principles guide the formation of undertakings in DHHS conferences than in police conferences. Many DHHS conferences seemed to be influenced by notions of (a) repaying the community ($n=21$) and (b) punishment ($n=21$). These principles were only noted in five and twelve police conferences respectively. The difference between the conference types on these ratings was significant.¹⁰¹ No significant differences were found between the ratings on the influence of other principles. Over three quarters of DHHS conferences were concerned with restoring the offender's honour and with the interests of victims. In six DHHS conferences a high priority was placed on preventing future offences.

Why did the undertakings agreed to in DHHS conferences far outweigh those of the police conferences? The simplest explanation is that the DHHS conferences dealt with more serious offences, especially in regards to property. Another explanation is that arguably the considerations of repaying the community and punishment worked to make DHHS undertakings more onerous. For instance, it appeared that community reparation for one young boy was to deliver pamphlets for five hours in his neighbourhood and help paint a public mural for eight hours. Regarding some of the most extensive undertakings, such as those involving the tip shop, it seemed that group enthusiasm underscored the development of extensive undertakings. That is, the group struck upon an idea that seemed 'restorative' and the offender agreed because (a) they felt they had to, (b) they wanted to show their bona fides, or (c) they themselves were optimistic about the task proposed. The case that resulted in 40 hours 'work experience' at the clothing store was especially marked with open enthusiasm from the offender.

Interestingly, during the period of the observations, December 2000 to January 2002, the DHHS coordinators decided that the undertakings agreed to in DHHS conferences were often too difficult for the youth to complete. Additionally, it was felt that too little attention was given to the support that the youth received from their families to fulfil their agreements (Drelich, pers. comm., 28/6/2002). To the credit of the DHHS coordinators, the severity of sanctions agreed to in later conferences was reduced. The main evidence for this is a reported increase in the number of undertakings completed

¹⁰¹ $t(58, 0.23)=4.32, p<0.01$; $t(55.4, 0.2)=1.17, p=0.02$.

from 2001 onwards (Drelich, pers. comm., 28/6/2002). This was achieved through the coordinators advising facilitators as to an appropriate outcome for each case during the preparatory stages leading up to each conference.

The more active involvement of the coordinators in the development of undertakings appeared to have a negative impact upon the restorative nature of some of the conferences. It was noted in seven DHHS conferences that the outcomes almost seemed predetermined. Facilitators sometimes clearly prompted offenders with comments such as 'remember what we talked about', or 'isn't there something else that you feel you should do?'. Alternatively when the conference turned to consider undertakings the facilitator would sometimes announce what the youth had suggested before the conference. Several times the southern coordinator, Les Drelich, explained that there was a vacancy at, for example, an anger management program. The seven times that welfare programs were 'suggested' in conferences they were adopted as part of the undertakings.

These approaches seemed to have a negative effect on some of the most fundamental aspects of restorative justice. First, to a degree the practices disempowered the main participants and cast them as passive onlookers (Bazemore, 1998). In one conference the middle aged victim – a member of a local council – participated well in the discussion of the impact of the crime but declined the opportunity to have an input into the outcome plan. He stated to the facilitator, police officer and a DHHS worker, 'you've got more experience in these matters'. The remark intimated that the victim viewed this part of the conference as a quasi-judicial process. In the same vein, the mother of one offender stated 'it's up to you to decide', deferring her contribution to the professionals in the conference. These observations confirm the concerns of Daly et al. (1998) that the professionals supporting restorative schemes can overpower the processes, albeit with good intentions. Secondly, some thought must be given to the impact of these practices upon the emotional dynamics of conferences. Predetermined outcomes appear to negate the naturalness and spontaneity of conferences. Perhaps the main participants are less likely to replace their negative feelings with positive emotions such as interest or excitement (Moore & O'Connell, 1994). Maybe passivity prevents the discharging of guilt/shame in offenders (Harris, 2001; Braithwaite, J. & Braithwaite, V., 2001). Or perhaps offenders perceive such practice as unfair (Maxwell & Morris, 1999).

The observations made in the present study introduce a new aspect to the discourse described previously concerning the principles of proportionality in restorative justice (Warner, 1994). That is, the DHHS discovered that onerous undertakings were, in practice, too difficult for many youths to complete, especially if they lacked simple support from their families. Yet, basic measures to introduce proportionality appeared to reduce the input of the main participants, increase the influence of professionals, and sterilize some of the emotional dynamics that seem important for restorative justice.

CONCLUSION

Tasmania has two streams of conferencing operating side by side. The police conferences now deal with the majority of all juvenile cases – chapter four indicated that over 60% of juveniles are dealt with this way. It is unclear to what extent the conferences observed in this study are representative of the police practices across the state. However, the southern and eastern practices – managing most ‘formal cautions’ as conferences – is the model that the police wish to employ state-wide and there is no current reason to believe that this will not occur. Therefore, if not now, then at some stage, the majority of juvenile offenders will be dealt with through processes that are based on restorative justice.

Typical police conferences observed in this study lasted around 45 minutes, and involved one young offender, one supporter for the offender, and one victim. Many of the conferences dealt with minor matters. However, very serious offences are often dealt with by way of a police conference too. Typical police facilitators are very experienced in conferencing. In fact many of their DHHS counter-parts will never reach their levels of experience in terms of the numbers of conferences convened. Police facilitators usually spend an hour preparing their conferences and for the most part this seems to involve telephone conversations to the victim and to the parents or guardians of the offender. This level of preparation is considered by police facilitators to adequately equip them to convene conferences effectively. However, generally there was an over-reliance upon the facilitators’ skill. Many obstacles to good conferencing and to restorative justice goals could have been overcome with more preparation and, arguably, face-to-face contact with the main participants, including the offender. Whether the police can afford the

resources to properly prepare the current numbers of police conferences is a matter of concern. The facilitators usually explain the legal framework of the conferences reasonably well. Frequently facilitators do not explain to the youth that if they choose not to complete the undertakings agreed to the police can take no further action. It is argued this is misleading and unfair to the youth. Arguably it may generate disrespect for the police amongst some youths when the truth is uncovered (Tyler, 1990). For the most part officers conduct conferences in a restorative way. The main participants are given an opportunity to speak. Facilitators are also good at negotiating outcomes acceptable to all – when appropriate – and seemed to control the stages of a conference well. Many officers appeared to genuinely adopt impartial stances and were not heavily ‘aligned’ to a police perspective.

However, even some of the experienced officers lapsed at times into directive behaviour. This did not seem in keeping with the restorative goal of democratic participation and it may have disempowered some participants. It also gave the impression that the police conferences were a quasi-judicial process. Although the study did not compare the undertakings given in police conferences to court sentences for similar offences, the police conferences did not seem to end in onerous undertakings. Community service orders and forms of compensation were rarely used. Contrary to the fears of some (Polk, 1994), the police in this state are not using conferencing for the purposes of punishment or excessive reparation for victims – at least for the time being. However, considering the lack of monitoring of police processes, the Tasmanian police certainly have the power to use conferences for such ends. Two cases observed suggested that the police need to be aware of net-widening. When dealing with juveniles for relatively minor offences, officers should be aware that directing some issues to conferencing may delay justice unnecessarily. Careful consideration also needs to be given to gate-keeping procedures. In particular, it seems undesirable for a youth to attend a police or DHHS conference for only some of the offences to which they have admitted. It is difficult to imagine that a youth can feel a true sense of closure at the conclusion of a conference when they have another conference – or a court hearing – pending for different matters.

One police facilitator who was observed running two conferences had none of the positive attributes of the other officers. His conferences appeared stigmatizing to offenders, dangerously traumatizing for victims, disempowering, and if anything

aggravated some of the harm caused by crime. This should remain a powerful reminder to those interested in the juvenile justice system of how poor practices can be. The good police practices observed in this study rested upon a small number of individual officers who are dedicated to conferencing and restorative justice. However, no system can depend on personalities indefinitely. What form will police diversionary practices take in five, ten, or fifteen years? This will be partly determined by the efforts that are made to train and monitor police facilitators effectively, as discussed in chapter five.

About 10% of juveniles pass through DHHS conferences. In many respects the basic features of DHHS conferences are similar to those conducted by the police. Although DHHS conferences tend to be longer, they tend to involve similar numbers of victims and also supporters for the offenders. Actually, a flaw of both conferencing streams is that not enough effort is made to attract enough adults who have meaningful bonds with the offender. Conducting conferences without a genuine community of concern for offenders diminished the chance for restorative outcomes occurring. Communities of concern also appear to be important for reductions in recidivism. Although DHHS facilitators will never gain the experience that police facilitators achieve, they invariably spend much more time and exert much more effort in preparing their conferences. Of course, DHHS facilitators are paid to spend up to ten hours in preparation. This preparation time and especially the practice of personally meeting the main participants means that DHHS conferences tend to run more smoothly. On the one hand this decreases the chance of something derailing the conference. On the other hand it increases the chance that restorative justice can take place. Typically DHHS facilitators introduce their conferences clearly in terms of legal issues. Despite the fact that they are less experienced than their police counterparts their facilitation skills are generally comparable. They manage the main stages of conferences well, allow all participants equal time to speak, conduct themselves without indicating any allegiance to one view, and negotiate outcomes fairly.

However, the formation of undertakings is troubling the DHHS currently. Some very restorative solutions were witnessed in DHHS conferences, and indeed in police conferences. But a good number of conferences appeared to arrive at very involved and onerous undertakings for young offenders. Amongst other reasons, it seemed that often the large undertakings were the product of enthusiastic group dynamics. This study

has not investigated which undertakings were actually completed. Nor has the research presented any information as to whether the undertakings were disproportionate to sentences that similar offences might have attracted at court. However, it seems that the DHHS found that too many youths were failing to complete the undertakings agreed to in DHHS conferences. The reaction to this was reasonable. The coordinators encouraged facilitators to 'lower the bar'. This change took place during the period of the observations. Yet by preventing enthusiastic group dynamics arriving at unreasonable undertakings a number of the DHHS conferences seemed sterile. Little or no brainstorming occurred. Many of the undertakings had been decided upon prior to the conference. Participants began to defer their input to the 'professionals'. These conferences did not seem as emotional as others and for this reason may not have been as effective (Moore & O'Connell, 1994). Exactly how to inject proportionality and consistency into restorative justice without (a) spoiling the emotional tone and naturalness, and (b) transferring power to professionals is a conundrum that may affect other restorative practices. This may be particularly true for those dealing with juvenile offenders who feel that adults know best and are keen to express their remorse with compliance.

CHAPTER SEVEN

PARENTS OF YOUNG OFFENDERS IN CONFERENCES

During the course of the conference observations, the father of one young offender stated ‘we’re not bad people’. This comment intimated that the father felt intimately connected with his son’s actions and with the outcome of the conference in a way hitherto unrecognised in the restorative literature. The comment, together with the father’s magnanimous involvement in the undertakings his son agreed upon, drew the present study into an area of research quite unanticipated at the outset – the importance of parent-child dynamics in conferences and restorative justice.

This chapter has four sections. The first section revisits the arguments that I presented in an article titled ‘Parent-child dynamics in community conferences – some questions for reintegrative shaming, practice, and restorative justice’ (Prichard, 2002). As the title suggests, the discussion to a large extent focuses upon Braithwaite’s (1989) theory of reintegrative shaming. It is argued that Braithwaite (1989) was incorrect to portray parents as inherently similar to any other supporter who might participate in a conference for a young offender. Rather, both psychology literature and qualitative observations of parents’ behaviour in conferences suggest that parents and children have a unique type of human relationship that can have an immense impact upon a conference. Braithwaite (1989) also recommended shaming parents. Evidence is presented to assert that shaming parents is dangerous. Amongst other possibilities, parents whose confidence in parenting is already wavering may be stigmatized and this may ultimately aggravate tensions in the offender’s home environment. The first section goes on to consider whether these criticisms can be leveled at recent revisions that have been made to reintegrative shaming theory by Braithwaite and his colleagues (Ahmed et al., 2001).

The second section encompasses the place of parents in the wider restorative justice

literature. It distinguishes between restorative literature that is practice-oriented and the literature which is entirely theoretical. Essentially neither body of literature recognizes that special dynamics exist between parents and their children which may have a very heavy influence on restorative goals. This section concludes that restorative justice needs to recognize that during a conference parents may fall into two categories: (a) that of having ‘contributed’ in some way to the actions of their child, and (b) that of being affected by the actions of their child to the point of being a ‘victim’. This is described as the ‘contributor-victim paradox’. The dimensions of the contributor-victim paradox are the topic of the third section of the chapter. This section concentrates heavily upon implications for restorative practices. The final section is a short conclusion which presents some new models for conceptualizing the place of parents in restorative justice.

7.1 PARENTS IN REINTEGRATIVE SHAMING

Reintegrative shaming and restorative justice are not synonymous concepts (Walgrave & Aertsen, 1996). Reintegrative shaming has been described as one of a handful of ideologies emerging from the restorative literature (Bazemore, 1998; see 1.3.2). Braithwaite, though, sees reintegrative shaming as an ‘indispensable conceptual tool’ for understanding how and when restorative justice can succeed (Braithwaite, J. & Braithwaite, V., 2001: 6). As explained in chapter one, John Braithwaite (1989) first presented his theory of reintegrative shaming in *Crime, Shame and Reintegration* at a time when the modern restorative literature was nascent and before learning of New Zealand’s family group conferencing scheme for juveniles. Recognising conferencing as a practical expression of his theory, Braithwaite became involved in an already operational conferencing programme in Wagga Wagga, Australia (Powers, 2001). Various developments led to the establishment of the Reintegrative Shaming Experiment (RISE) in Canberra, the largest experiment of its kind in Australia and one of the largest internationally.¹⁰² The results of this experiment have led to refinements of reintegrative shaming in *Shame Management Through Reintegration*, discussed in this chapter (Ahmed et al., 2001).¹⁰³ Some restorative writers do not consider reintegrative shaming important to

¹⁰² See <<http://www.aic.gov.au/rjustice/rise>>.

¹⁰³ See generally Braithwaite (1999), Braithwaite and Mugford (1994), and – for Braithwaite’s normative theory of the criminal justice system – see Braithwaite and Pettit (1990).

restorative justice, whilst others consider its aims as contrary to restorative goals (Maxwell, 2001). This chapter does not take up that specific debate. Rather, it treats reintegrative shaming as a developing arm of restorative justice, one that has been highly influential in juvenile conferencing in parts of Australia, the United Kingdom and Canada (Powers, 2001).

By melding concepts from a handful of dominant traditions in criminology, *Crime, Shame and Reintegration* drew attention to the use of shame as a type of informal social control to curb criminality. Braithwaite (1989) asserted that shame can be used constructively to discourage criminality when elicited in ceremonies with three important features. First, that the offender's 'community of concern', or significant others, attend the ceremony. Secondly, that the ceremony be conducted in the backdrop of an overarching affirmation of the offender. Thirdly, that the ceremony ends in forgiveness. Because the aim of such ceremonies is to reintegrate the offender back into the community Braithwaite (1989) termed the process reintegrative shaming. However, Braithwaite (1989) also highlighted the dangers inherent in the use of shame without socially embedded forgiveness. This may lead to stigmatisation and increased criminal behaviour.

Although Braithwaite (1989) refers to the families of offenders repeatedly, and obviously sees them as very important in the equation of crime, I argued that his work had two faults in regards to the way it conceptualised parents (Prichard, 2002). First, the theory inadequately assesses the emotions that might be felt by parents of young offenders in conferences. In particular, the theory ignores the fact that parents can often feel that their children's actions reflect very heavily upon themselves. Amongst other emotions, parents may feel that they are 'on trial', being assessed or scrutinised. For this reason parents need to be differentiated from other members of the community of concern. Secondly, as noted, I raised concerns about Braithwaite's (1989) suggestion that deliberately shaming the parents of young offenders may be conducive to reintegrative shaming. These two issues will now be discussed in separate sub-sections. A third sub-section will discuss whether my concerns apply to recent adaptations that Braithwaite and his colleagues have made to reintegrative shaming theory (Ahmed et al., 2001).

7.1.1 Parents of offenders in conferences – is their experience just the same as any other member of the community of concern?

Crime, Shame and Reintegration undoubtedly sees the families of young offenders as important. Families are recognised as providing the ‘most important’ (Braithwaite, 1989: 30, see also 100) kind of social bonding and they can play a special role in changing the context of shaming from stigmatising to reintegrative. However, Braithwaite (1989) does not devote much attention to the emotions that families might experience when supporting one of their members in a reintegrative shaming ceremony (hereinafter conference). In one section he recognises that families might feel some type of shame:

The effectiveness of shaming is often enhanced by shame being directed not only at the individual offender but also at her family, or her company if she is a corporate criminal. When a collectivity as well as an individual is shamed, collectivities are put on notice as to their responsibility to exercise informal control over their members, and the moralizing impact of shaming is multiplied ... a shamed family or company will often transmit the shame to the individual offender in a manner which is as reintegrative as possible. From the standpoint of the offender, the strategy of rejecting her rejectors may resuscitate her own self-esteem, but her loved ones or colleagues will soon let her know that sinking deeper into the deviant role will only exacerbate the shame they are suffering on her behalf (1989: 83).

Thus Braithwaite (1989) provides two main categories of supporters, families and companies, and both are collectivities. From the content of other sections of the book it can be assumed that the references to families was intended to encompass all relatives from distant cousins and in-laws on the one hand, to twins, parents and spouses on the other (Braithwaite, 1989: 25). Parents, therefore, will feel emotions in conferences. But their emotions will be largely indistinguishable from those felt by any other member of a family and substantively similar to those felt by the colleague of a white-collar criminal. Furthermore, in regards to experiencing shame, the members of the collectivities including parents will suffer *on behalf* of the offender. Like the average member of a community of concern, parents are loving onlookers; they are worried, upset, and keen to express in a loving way that the offender has ‘let the side down’.

This view is one-dimensional and simplistic. There are very good reasons to believe that the emotions felt by parents in conferences are intensely personal and unlike those experienced by any other supporter. Research on the psychology of parenting indicates that, for most, parenting is highly bound with perception of the self (Prichard, 2002; Coleman & Karraker, 1997; Coleman, 1999; Binda & Crippa, 2000; Seefeldt et al., 1999; Bachicha, 1998; Buxton, 1993; Gross et al., 1995; Whitbeck, 1987). The root of most of this work is Albert Bandura's (1977, 1982, 1989) theory of self-efficacy, which by all accounts has made its influence felt in several disciplines (Gecas, 1989). Self-efficacy refers to our perception of our ability to achieve goals or perform tasks in every aspect of life. Three grades of self-efficacy have been identified by further research (Coleman & Karraker, 1997). The first is the task level, which concerns specific tasks ranging from brushing teeth to typing. The domain level refers to broader spheres of life – good examples might include parenthood, interpersonal relationships, or professional capacity. The highest level, the general level, incorporates our overall perception of our ability to succeed in life (Bandura, 1989).

Our capabilities in different arenas impact to varying degrees upon our self-perception. A famous writer may not care that they cannot touch-type (task level). Critical acclaim of their writing abilities and perceptiveness (domain level), on the other hand, may almost be determinative of their self-worth (general level). Of all the labels and narratives that we attach to ourselves, Coleman and Karraker (1997) argue that parenthood is particularly important. In fact, like the example of the writer, Coleman and Karraker (1997: 68) suggest that success in parenting is so 'highly esteemed [that] parenting becomes tightly bound with most individuals' conception of self'. However, success in parenting is not easily attainable. Rather, Coleman and Karraker (1997: 47) suggest that parenting 'represents perhaps the most taxing social role encountered in young and middle adulthood, placing significant intellectual, emotional, and physical demands on today's mothers and fathers.' Their certainty that perceived ability as a parent (or parental self-efficacy) is entangled with self perception led them to reinterpret the correlations found by a strong body of studies between low parental self-efficacy and depression (see Maddux & Meier, 1995; cited in Coleman & Karraker, 1997). Previous hypotheses suggested that depression led to low parental self-efficacy. Coleman and Karraker (1997) argue the opposite causal relationship. That is, perceived failure as a parent can so dominate self-perception that it triggers depression. Obviously this

hypothesis will need to be proven by future research. Nonetheless it highlights the growing awareness of the intensity and depth associated with the psyche of the parent. For most parents success in parenting is an important life-goal.

Arguably, the clearest indicator of 'success' in parenting is whether the children concerned are developing into valued, appreciated individuals. Outstanding achievements of a child – or indeed an adult – often reflect very positively upon their parents. For instance, the parents of famous adults are often given special recognition.¹⁰⁴ This occurs because, arguably, a child represents to a large degree the product of her or his parents' genes, parenting skills, lifestyle and values. Conversely, the wrongdoings of a child reflect negatively upon the parents, as vividly captured on film in a documentary where the mother of a murderer apologised repeatedly to the victim's parents (*Facing the Demons* (video recording) 1 June 1999, ABC Television). In a juvenile conference countless issues arise that reflect in some way upon the parents. For example, the irregular sleeping patterns and alcohol abuse of a youth raise questions about parenting skills and competency. Poor academic performance may suggest inherited learning disabilities that perhaps embarrass the parents. Or, an apparent inability to empathise with a victim or comprehend the wrongfulness of an offence may mirror the values of the parents or the example they have provided. Most parents, it is argued, will be quite aware of these and similar 'questions' – however inaccurate – that are rising in the minds of the adult participants in a conference.

In contrast, in the white-collar scenario, though the colleague might feel a little embarrassed that the offender was ever employed or that better regulations were not in place in the company, they can feel fairly certain that the problems do not reflect upon their genes, lifestyle, values or personality. There is no such distance for parents. Unlike the professional, they cannot hide behind the corporate veil if their daughter swears in a conference and admits she vandalised a car for fun. In a conference parents are generally aware that they are perceived to have a very close proximity to the root of the problem. As well as suffering on behalf of their child, sensing their discomfort, shame and fear, it is suggested that parents are likely to be suffering personally. They are not just a part of a 'collectivity' that has been 'put on notice' (1989: 83). They may feel blamed by others

¹⁰⁴ A sentiment captured in an ancient Aramaic compliment 'Blessed is the mother who gave you birth and nursed you' (Luke, 11: 27).

in the conference, guilty that they had not prevented a situation, worried that they will not be able to avoid future problems and so on. Parents may well feel ‘on trial’ (Prichard, 2002). On this point, it is interesting to note that victims have indicated that meeting the families of young offenders enables them to ‘understand more why the offence had occurred and assess the likelihood of it recurring’ (Morris and Maxwell, 2000: 211). Perhaps it is the parents of the offender that matter most in such ‘assessments’.

Other than the parental self-efficacy literature, I also presented qualitative observations of parental behaviour in conferences as evidence that conferences for parents are a far more personal affair than Braithwaite (1989) infers (Prichard, 2002). I described (a) personal apologies by parents to victims, (b) generous commitments by parents to help their child complete undertakings, (c) various types of defensive behaviour by parents, including attacking their child, and (d) denial of the child’s culpability and/or disinterest in conference proceedings (for other anecdotal references to these behaviours see Pratt & Grimshaw, 1985; Braithwaite & Mugford, 1994; Levine et al., 1998; Maxwell & Morris, 1993). These parental behaviours will be discussed in more detail in the review of broader restorative justice literature in section 7.2.

7.1.2 Directing shame towards parents

More disturbing than the one-dimensional portrayal of the feelings of parents in conferences is Braithwaite’s (1989: 83) suggestion that the ‘effectiveness of shaming is often enhanced by shame being directed not only at the individual but also at her family’. Strong concerns rise from this recommendation. According to Braithwaite’s (1989) own definition of stigmatising shame, parents may be at risk of stigmatization. As noted, Braithwaite (1989) stated that for ceremonies such as conferences to be reintegrative they must (a) involve a community of concern, (b) be conducted in the overarching context of love and acceptance of the offender, and (c) terminate in forgiveness. Braithwaite (1989) encourages the shaming of parents without giving any consideration whatsoever that (a) a community of concern is present *for the parents*, or (b) there is an overarching context of acceptance of the parents, or that (c) the shaming of the parents ends in forgiveness. It cannot be assumed that the people who constitute the community of concern for the offender will also have meaningful bonds with the parents. The football coach whom the offender admires may be a vague acquaintance of the parents. Indeed, the aunt

who has always maintained a special bond with the youth may be estranged from the parents. But is the type of shame 'directed' towards parents likely to be stigmatizing? First, there is no way of metering low dosages of shame. What may be intended as a mildly confronting comment may actually cause deep humiliation. Secondly, Braithwaite (1989) at no point indicates how intensely parents are to be shamed. However, he does state at one point that 'reintegrative shaming is not necessarily weak; it can be cruel, even vicious' (Braithwaite, 1989: 101). Later, Braithwaite and Mugford (1994: 144) wrote; 'The shaft of shame fired by the victim in the direction of the offender might go over the offender's head, yet it might pierce like a spear through the heart of the offender's mother, sitting behind him'. Arguably, therefore, there is every reason to believe that the type of shaming Braithwaite (1989) was advocating be directed at collectivities, including parents, was intense and capable of stigmatization.

The theory of self-efficacy (Bandura, 1989) also supports the argument that parents could be stigmatized in conferences. Self-efficacy is formed from various sources of information that we receive about ourselves and the weight that we feel we can attach to that information. Two such sources include our previous triumphs and failures and encouragement from others (Bandura, 1977, 1989). Understandably, many parents could interpret various points of discussion raised in a conference as reminders of their own failures in parenting, including their child's poor school reports, previous misdemeanours, evidence of a lack of parental supervision and so on. Furthermore, far from encouragement, following Braithwaite's (1989) recommendation to shame parents some conferences could actually involve some type of admonishment. Most parents could probably cope with these negativities. However, parents who already have a low parental self-efficacy may not be able to dismiss the information so easily, particularly since low self-efficacies tend to cause individuals to 'assume more responsibility for failure than success' (Jerusalem & Mitag, 1995; cited in Coleman & Karraker, 1997: 55). This in turn may lead to worse parenting techniques since low parental self-efficacy is correlated with 'everyday negativity and/or disinterest' to child maltreatment in extreme cases (Coleman & Karraker, 1997: 48). It is also worth noting that low parental self-efficacy has been linked with defensive and controlling parenting behaviours (Donovan et al., 1990), the use of coercive discipline (Bugental & Cortez, 1988; Bugental, 1991), passive coping styles in parenting, and maternal perceptions of child difficulty (Wells-

Parker et al., 1990). Worse parenting skills could affect other children of that family in a variety of ways (Coleman & Karraker, 1997; Whitbeck, 1987).

No studies have attempted to estimate the prevalence of low parental self-efficacy across society. Coleman and Karraker's (1997: 47) meta-analysis merely suggested that 'a minority' of parents have very low confidence in their abilities as parents. However, amongst other things, low parental self-efficacy has been correlated with low social support, poverty, and unemployment (Coleman & Karraker, 1997: 75) – some of the central stresses upon families that have also been correlated with criminality (Gale et al., 1993; Braithwaite, 1989). Thus, if criminality and low parental self-efficacy are correlated to the same factors, it is plausible that not only conferences but the whole criminal justice system engages high proportions of parents who lack confidence in their parenting abilities.

These findings led me to the alarming conclusion that without taking care to avoid the stigmatisation of parents, conferences could actually be aggravating negative aspects of the home environment of those young offenders most at risk of re-offending. This conclusion was made without the knowledge of Maxwell and Morris' (1999: 42) findings. Their analysis revealed that 'not being made to feel a bad parent' was one of eight significant factors predicting non-reconviction for juvenile offenders after a family group conference. In other words, being made to feel 'a bad parent' during a conference was a predictive factor of repeat offending. Importantly, over 30% of the parents of the youths who had been persistently reconvicted after the conference felt that the conference had made them feel a bad parent. In contrast, of the parents of youths who had not been convicted again after the conference, only 6% felt this way. It is argued that the arguments presented in this chapter offer a partial explanation for Maxwell and Morris' (1999) findings.

7.1.3 Do revisions to reintegrative shaming diminish these concerns?

In what way has *Shame Management Through Reintegration* diminished these concerns with reintegrative shaming? Regarding, firstly, the portrayal of parents in conferences, the special relationship is given more importance but is still not distinguished sufficiently from other relationships with friends and family. Harris (2001) tackles the construct of shame, or 'shame-guilt', and identifies an aspect of shame as the sense of loss of

honour among family and friends. It is also greatly emphasised that direct confrontation with an offender over wrongdoing will be 'utterly ineffective' unless it is conducted by those whom the offender respects 'very highly' (Braithwaite, J. & Braithwaite, V., 2001: 31). Ahmed (2001) later draws the analysis specifically towards parents when considering bullying behaviour amongst children. She suggests that stigmatizing parenting techniques can contribute to bullying behaviour amongst children (Ahmed, 2001). Ahmed also examines the context of parent shaming, including the degree of love communicated to the child and the harmoniousness of the household environment. However, other than passing reference to the importance of parental praise in conferences (Scheff & Retzinger, 1991; cited in Braithwaite, J. & Braithwaite, V., 2001: 15) and family shame (Braithwaite, J. & Braithwaite, V., 2001: 65), there is little consideration of the tapestry of emotions that might assail a parent in a conference.

The second issue, the deliberate shaming of parents in conferences, has not been specifically addressed by Ahmed et al. (2001). Perhaps the trends of the RISE data simply did not attract attention to the issue of shaming collectivities. More likely, however, the concept of directing shame towards parents (or anyone else) would not sit comfortably with the new tenor of reintegrative shaming in *Shame Management Through Reintegration*, in which there is a significant shift in the way in which shame is to be harnessed. Initially, Braithwaite (1989) was confident that shame could be reintegrative providing that it was for a set period, positive bonds were maintained with the offender, and the shaming ended in forgiveness. As noted, in these circumstances effective reintegrative shaming need not necessarily be 'weak', it could be 'cruel, even vicious' (1989: 101). Contrasting with this is the fresh emphasis upon confronting wrongdoing 'indirectly' and 'implicitly inviting the wrongdoer' to face their action, apologise, and seek restoration (Braithwaite, J. & Braithwaite, V., 2001: 33). 'Normally', this is accomplished by encouraging discussion of the 'hurt' without mentioning culpability or unconscionability (Braithwaite, J. & Braithwaite, V., 2001: 33). Furthermore, there is no longer any sense that shame is some sort of emotional projectile, aimed, hurled, or directed by anyone. Rather, shaming now is to be considered more broadly than a behaviour designed to elicit shame (Harris, 2001). It is a complex and dynamic process in which the major participants play an active role (Harris, 2001). In summary, my concerns about the stigmatisation of parents in conferences do not seem to apply to the latest formulation of reintegrative shaming theory (Ahmed et al., 2001).

However, it is suggested that the theoretical stance towards the shaming of parents needs to be spelled out by Braithwaite or one of his colleagues. As progressive as *Shame Management Through Reintegration* is, it is likely that many or most of the restorative practitioners who adhere to reintegrative shaming continue to function according to their understanding of *Crime, Shame and Reintegration*. It is too much to hope that the recent subtle – and complex – change in ethos will translate to a change in practice that avoids the stigmatization of parents. Certainly, Braithwaite is more than aware that his theory of reintegrative shaming is ‘a moving target’ (Braithwaite, J. & Braithwaite, V., 2001: 13). However, whether practitioners will be bothered to track this moving target is another question. From contact with police officers in Tasmania who have promoted reintegrative shaming in conferencing, it seems that some practitioners are rather reluctant to digest recent revisions. For some it may be a matter of time pressures. Others could be piqued that a theory that they have enthusiastically taught others is vacillating. In any case, more accessible pieces may need to follow Ahmed et al. (2001).

7.2 PARENTS IN BROADER RESTORATIVE JUSTICE

There are good reasons why the issue of stigmatizing the parents of juvenile offenders should interest all restorative justice practitioners and not just those influenced by reintegrative shaming theory. Maxwell and Morris’ (1999) findings, noted above, suggested that parents were stigmatized in conferences in New Zealand. However, reintegrative shaming theory is not used to direct conferencing practice there (Daly & Hennessey, 2001). Therefore, it appears that parents can be stigmatized in conferences without the deliberate use of shame by facilitators or others. One danger is that restorativists will think lightly of this issue because of the very high percentages of parents who have reported satisfaction with conferences, as many as 85% to 98% (Maxwell & Morris, 1993; Palk et al., 1998). However, two points spring to mind about these satisfaction levels. First, attention needs to focus upon the minority of parents who are not satisfied. In this group might be found the parents who felt stigmatised during the conference that they attended. Potentially the repercussions of their stigmatization could be severe – worse than if the cases had been sent to court and, indeed, worse than if the offence had not been dealt with by the criminal justice system at all. The second point is that generally care should be taken in the interpretation of

participants' 'satisfaction' with conferences (see further Young, 2001). For example, it was only when Maxwell and Morris (1999) returned to the same parents that they had interviewed in their 1993 study and asked them a different question – 'were you made to feel like a bad parent during the conference?' – that the stigmatisation of parents became apparent. Likewise, in Queensland, Palk et al. (1998) found that 60% of parents found their relationships with their children improved after they attended a conference. Had they been asked, perhaps some of the remaining 40% of parents would have revealed that their relationships actually deteriorated in the post conference stage.

In considering how to avoid parent stigmatisation in conferences the discussion will now weigh how parents have been portrayed in the wider restorative literature. Has the wider restorative literature differed markedly from reintegrative shaming in its assumptions about parent-child dynamics? Interestingly there are discernable differences between (a) the literature that discusses practice – conferencing and other forms of restorative justice – and (b) the literature that confines itself to theory.

7.2.1 Practice-oriented restorative literature

The practice-oriented restorative literature unquestionably considers parents important in the equation of youth crime. One reason for the importance of parents in conferencing is that they are an 'irreplaceable resource' for young offenders who 'need their input and support', not only during the conference but in fulfilling the undertakings agreed to (Levine et al., 1998: 164). Other than emotional and practical support parents are both the 'primary socializers and primary mechanism' of social control for their children (Morris & Maxwell, 2000: 213). For these reasons it is useful not to alienate parents from the conferencing process and it makes sense to give them responsibility – hand in hand with the state – for their offspring's criminal behaviour. This is not to suggest that the literature views parents and families naïvely. Practice highlights that often families face emotional and financial challenges that make it very difficult for them to help their child complete undertakings (Bargen, 1999). Commentators have also warned against forgetting the prevalence of family violence and abuse in the lives of young offenders (Sandor, 1993). Families facing difficulties, or 'dysfunctional' families, have not been abandoned by restorative justice advocates, however. Maxwell and Morris (1996; see also Braithwaite, 1999) argue that conferences can be beneficial to challenged families. More recently, Crawford and Newburn (2003) reviewed restorative community panels in

the United Kingdom. They recorded several comments from parents that revealed the parents' experience of the panels, including feeling sympathy for the victim and embarrassment. Crawford and Newburn (2003) also highlighted the importance of properly briefing parents before the panels in the same way as other participants.

Undeniably the practice literature conceives the lives of young offenders as intertwined with the lives of their families. And there is clear recognition of some of the positive and negative influences that parents potentially can exert upon a conference. Yet, there is nevertheless a projection of the parent as someone emotionally *external* to the youth: an irreplaceable resource maybe, but at best loving onlooker and supporter. The practice literature does not investigate the various ways that a conference (or panel) may affect parents nor what consequences this may have for the youths.

7.2.2 *Theory based restorative literature*

What about the theory based literature? Essentially there appears to be no theoretical space cleared for the role of parents in restorative justice. The 'organic' development of restorative justice was discussed in the first chapter, as was the fact that different branches or themes are emerging in restorative theory. Nevertheless, central concepts underlie many of the divergent themes. One core concept of restorative justice is that crime is defined as an injury suffered by victims and communities (Pranis, 1998). Along with offenders, victims and communities are central to resolving crime (Thorsborne, 1998). These three entities – offenders, victims and communities – seem to have become a central framework of restorative justice, although, where restorative justice has grown from victim-offender mediation the emphasis placed upon communities is less evident (see further 1.2; Crawford & Newburn, 2003). It is useful to present again Bazemore's (2000) figure which represents the common ground between offenders, victims, and communities.

Figure 7.1 The interaction of victims, offenders and communities in restorative justice.



It was noted in chapter one that most restorativists value informalism and natural dialogue (1.2). Stakeholders in an offence are not labelled with strictly defined roles. Further, it is understood that the boundaries between the constructs 'victim', 'offender', and 'community' blur (Cunneen & White, 2002). At the theoretical level a number of goals are set for offenders, victims, and communities. Restorative justice promises offenders five main opportunities, though these do not represent an exhaustive list (Braithwaite, 2003). The first and perhaps the simplest is the chance to apologise to the victim after learning of the full impact of the offence. Many authors have emphasised that restorative justice allows the offender to be active instead of passive (Bazemore & Umbriet, 1995). Thus, the second opportunity offered to offenders by restorative justice is to be actively involved in deciding what needs to be done to effect material and emotional reparation for the victim. The third opportunity of which the offender may choose to take advantage is to actively see those plans to fruition. Fourth, offenders may experience forgiveness. Although this is heavily dependent upon the victim, the community via other participants may also offer forgiveness. Through apology, forgiveness, participation in decision making, and accountability in fulfilling undertakings the offender can restore their own honour (White, 2003). Finally, throughout this whole process the offender is supported, ideally by family and friends. Hopefully, not only does the offender benefit from realising how important they are to their significant others but these relationships can be strengthened by the ordeal (Braithwaite, 1999).

Victims benefit, *inter alia*, not only from expressing forgiveness but from both symbolic

and tangible evidence that the offender and the community recognise their injury (Zehr, 1990). Another frequently mentioned benefit for victims is the opportunity to understand why the offence occurred and whether they are likely to be the target of crime again (Daly, 2003). Most commentators have assumed that to these ends victims tend to focus on the offender: the motives behind their offence, their attitude, their remorsefulness et cetera. Others have found that it is the offender *and their family* that victims observe to gauge why the offence took place and the chances of reoccurrence (Maxwell & Morris, 1999). The benefit offered to communities through restorative justice is more oblique (Walgrave, 2003). At the most basic level communities may hope to experience less crime and therefore more safety through systemic acceptance of restorative justice (White, 2003).

The most positive comment that can be made about the theory based literature in terms of its coverage of parents is that at least there are no recommendations for deliberate confrontation with or shaming of the parents of young offenders. Yet, as with the practice oriented literature the rich tapestry of parental emotions and the complex dynamics between parents and their children is not considered. One of the most useful concepts arising out of my analysis of the role of the family was that just as the distinctions between victim and offender blur at times, so to do the boundaries between (a) youths and parents and (b) victims and parents. Quite clearly from parental behaviour observed in conferences parents sometimes feel personally responsible for the actions of their child – best evidenced in parents' apologies to victims and others. Additionally, there are good reasons to believe that children somehow form part of parents' self perception – 'we're not bad people' one father stated. These are two examples of how the distinction between 'offender' and 'parent' blur. Simultaneously, youths frequently apologise to their parents in conferences for breaches of trust, inconvenience, embarrassment, material damage and the like. In this and other ways the distinction between 'victim' and 'parent' bleed into each other. In a very real sense parents of young offenders in conferences have the most peculiar role of all the participants. Quite frequently parents will have to manage being cast as 'contributor' to the crime when discussion – or the subtext of discussion – turns to their parenting skills or lack thereof. And yet in the same conference they may be very well required to 'change hats' and play the role of 'victim'. This might be termed the **'contributor-victim paradox'**. This was observed in over one third of cases and was partly

caused by the structure of the conferences. At the beginning of the conference as the facts of the case were discussed, issues were raised that sometimes reflected upon the parents negatively, such as the erratic sleeping patterns of the offender or excessive liberty. Later, parents were asked to describe how the offence affected them. It is certainly not argued that the contributor-victim roles are synthetic constructs. Rather they reflect particular complexities of crime, particularly as they relate to juvenile offenders. The contributor-victim paradox is the subject of the next section of the discussion.

7.3 PARENTS AND THE CONTRIBUTOR-VICTIM PARADOX

There are three reasons why it is vital to explore the contributor-victim paradox in restorative justice. First, the process will redefine what restorative justice conceives as appropriate behaviour for parents in restorative forums (including conferences). This will flow onto the second and most important reason – to inform good practice in all restorative conferences to avoid stigmatizing parents and to *seek the true restoration of parents* in the aftermath of crime. Thirdly, this investigation will add a new dimension to our understanding of the ‘collective emotional dynamics’ that ‘research literature on restorative justice has not risen to the challenge of capturing’ (Braithwaite, J. & Braithwaite, V., 2001: 59).

This section of the chapter has two parts which together explore the contributor-victim paradox. The first part concentrates on ‘parents as contributors’. It considers the extent to which, as contributors, restorative justice (a) provides parents with the opportunity to apologise, (b) empowers parents to deal with the aftermath of crime, and (c) gives parents the opportunity to receive support from their family and friends. The first part goes on to discuss how the issue of forgiveness for parents might be dealt with in restorative justice. Finally, a wide variety of real-life complexities concerning parents are considered and how these might be managed in a restorative way. The shorter second part discusses ‘parents as victims’.

7.3.1 *Parents as contributors*

Perhaps the most necessary caveat upon the analysis that follows is that so much

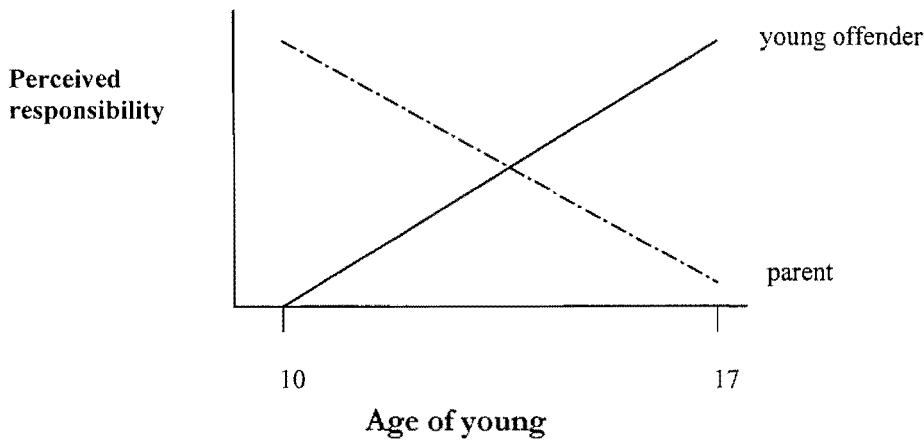
depends upon the perception of the parents themselves as to whether they have ‘contributed’ to their child’s crime. Links between the behaviour of some parents and their child’s offence are sometimes irrefutable. For instance, discussed below is a case where a mother drove her son to a department store to steal. Long term neglect can also be viewed objectively as a ‘contribution’ to a juvenile’s crime. Most often, however, it is impossible to attribute blame to a parent objectively – that is, from the view of an outsider. Whether the parents’ contribution is clear or not, some parents may feel a great deal of responsibility for their child’s actions. Others may be quite indifferent about the criminal actions of their daughter or son. The latter may be an unhelpful response to serious offences, but arguably an understandable standpoint for minor offences (especially if it is the first offence committed by their child). In either case, parents should not be forced into any role – that is, obliged to apologise or to help out with undertakings for instance. This is so because it is not the parents that the criminal justice system is dealing with. More important, attempts to manipulate parents may easily be interpreted negatively. Lee’s (1995) British study of police cautioning noted parental dissatisfaction. One father stated that the police treated him ‘as if [I] was the one that committed the crime’ (Lee, 1995: 319). In respect to a caution for a minor offence a mother commented ‘... in a case like this it has nothing to do with the way we bring up our kids or anything like that. It was only a spur of the moment thing, my son did something stupid and that was it’ (Lee, 1995: 329). Crossing boundaries into excessive direction or manipulation of parents may also be stigmatising in the sense of damaging their parental self-efficacy. There is also the important point to make that facilitators must be extremely careful about their interpretations of the emotions of all participants, including parents. Apparent disinterest on the part of parents may actually be driven by any number of factors, such as other worrying life matters that dwarf the significance of the youth’s offence. Again the comments of Lode Walgrave seem applicable, that facilitating is ‘an art’ (pers. comm., 14/10/2002). All restorative justice practitioners need to be sensitive to parents’ positions case-by-case and react to them appropriately in both conference preparation and during the conference itself.

In my article on parenting I began to unravel why some parents feel accountable for their child’s actions (Prichard, 2002). In a conference, neglectful parenting may be the subtext of revelations about the youth such as irregular sleeping patterns, alcohol abuse, or poor academic performance. At a deeper level, insofar as a child represents the ‘product of his

or her parents' genes, parenting skills, lifestyle and values' (Prichard, 2002: 333), that 'product' seems to be faltering. No doubt these observations have just scraped the surface of a wonderfully complex topic to which many bodies of literature, including those in areas of child development and psychology, could contribute (see for example Whitbeck, 1987).

Some relatively simple points should be made about accountability, however. Tasmania, like many common law jurisdictions, has set the age of criminal responsibility at the age of ten. From this age until 18 the law recognises the maturation of children to adults by increasing responsibility with age. For instance, under the *Youth Justice Act 1997* (Tas) offenders aged 10 to 13 can be diverted away from court for more serious offences than those aged 14 to 16 (see 3.3). Likewise, the presumption of *doli incapax* recognises that 10 to 14 year-old offenders may not know that their criminal actions were seriously wrong. When sentencing an offender, youth is almost invariably a mitigating factor (Warner, 2002). These reactions of the legal system not only mirror community standards but arguably also psychological research into the moral development of young people. For instance, the highly controversial but nonetheless influential research of Lawrence Kohlberg (1964, 1976, 1984) suggests that some time in their early teens, many youths' moral reasoning moves away from self-centred concern for individual gain. These strains of thought prompt the question: If offenders' culpability increases as they grow from children to youths to adults is there a *corresponding decrease* in the responsibility of parents? To provoke the discussion of this point the concept is presented pictorially in Figure 7.2, below.

Figure 7.2. Model of perceived responsibility for juvenile crime: parents and youths.



This model certainly represents generalities and is necessarily equivocal. Apart from different dynamics between different parent-child relationships, child development and the path of maturation is irregular. In one conference a 15-year-old girl, who was living away from home and who carried herself with confidence, was described as '15 going on 22'. Yet in a different conference a 15-year-old boy seemed extremely shy and relied heavily on the contributions of his parents in the conference.¹⁰⁵ Perceived responsibility refers to the views of the parent and the child as opposed to the legal system. It must be acknowledged that there is some type of normative social perspective at play as well in perceived responsibility. The main point of the model is to highlight (a) that 'juvenile' conferences deal with children through to young adults, and (b) parent-child dynamics concerning accountability will probably be affected by the age and maturity of the offender.

Described above (7.2.2) were some of central aims that restorative justice has for offenders: (a) the opportunity to apologise after learning the impact of the crime, (b) empowerment in helping to determine how the damage caused may be repaired, (c) responsibility in seeing these plans to fruition, and (d) the opportunity to receive support from friends and family. When parents feel partly accountable or cast as contributors to a crime how can restorative justice offer them similar opportunities as are offered to offenders?

¹⁰⁵ It is worth noting the different perspectives of youths who had attended a family group conference in New Zealand during which their parents had played a large role; (a) 'Dad and me did it together.'; (b) 'My dad decided, but I feel OK about it.'; (c) 'I felt that they had decided on what I had to do before I got the chance to talk' (Maxwell & Morris, 1993: 112)

7.3.1.1 Apologies by parents

Parents should be given the opportunity to apologise to whosoever they wish in a conference. In seven of the 67 conferences parents apologised and I have argued such apologies were clear evidence of a sense of personal responsibility amongst parents (Prichard, 2002; see also Levine et al., 1998; Maxwell & Morris, 1993).¹⁰⁶ Moreover, no other supporter of a young offender offered any sort of apology in the 67 conferences observed – indicating the uniqueness of parent-child relationships. Four of the apologies were directed to the victims. Some were as simple as ‘I’m sorry for what happened’. Others were more expressive: ‘My heart goes out to you’. The remaining three apologies were more ambiguous and seemed to be directed towards the whole conference group. The facts of one conference suggested that the offender had devoted parents who were trying their best to deal with a wilful son. At the end of the conference the mother cast her eyes around the circle and said ‘I’m sorry about all this’. It was difficult to understand the essence of the apology, whether it was an apology for not ‘doing more’ or simply an acknowledgment that she was responsible for her 12-year-old son’s behaviour. Notwithstanding the ambiguity of the apologies, truly restorative conferences must recognise the need that some parents may have to apologise as a part of their own healing process. Parental apologies are probably well accepted by victims too and may aid their restoration – an area for future research. Opportunities to apologise may subtly be provided at the end of conferences simply by giving all participants the chance for a final comment.

7.3.1.2 Empowerment in deciding undertakings and involvement in the fulfilment of undertakings

Australian commentators have generally been wary of the autonomy of the youth being overtaken by competing interests when it comes to the determination of the undertakings. Parents have at times been grouped with others who cause a conference to take the appearance of a powerless youth in a room full of adults (Daly et al., 1998). Whilst not discounting the issue of offender disempowerment, practitioners should be aware that at times both the youth and the parents may be quite comfortable with much of the conversation and ‘negotiation’ being conducted by the parent. This may represent

¹⁰⁶ Again, of the 67 conferences observed, 6 were observed in the early stages of the research during the development of the methodology – the data presented in chapter six related to the remaining 61 conferences.

the support, care and example that the youth wants, needs or expects and in this sense strengthen the parent-child bonds (see also Braithwaite, 1999). Being able to behave in this way may serve two purposes for parents: to 'make up for' their perceived contribution to the crime and replenish their parental self-efficacy in supporting their child in the way they think that they should.

In the same vein it may be completely restorative for all concerned if the parent is allowed to actually be involved in completing the undertakings with their daughter or son. The father who tentatively mentioned 'We're not bad people' committed himself to making a pushbike out of spare parts with his son. The bike was handed over to the victim a week later. The facilitator attended the exchange in an unofficial capacity. She stated that whereas considerable hostility had existed between the two families before the conference, when the bike was handed over the conversation went so well the whole group went to a swimming pool together. I noted five such incidents and termed them 'magnanimous undertakings'. Like apologies, these behaviours are also indicative of parents perceiving that they had some responsibility for the offence concerned.

Interestingly in all cases it was fathers who behaved this way. This may be due to chance. But perhaps mothers and fathers are prone to behave differently? The magnanimous undertakings varied in form. Some took the form of insisting that the youth provide compensation to the victim when it was quite clear that the offender would have to rely on pocket money. In an arson case involving over \$80,000 worth of damage the father of one offender asked if he could provide and install a security system in the victims' new shop. A different father suggested that he and his son could sand and paint 45 pickets of a wooden fence that the youth had vandalised. Another conference involved a 17-year-old youth who, in one night, had joy ridden in three cars and caused damage to each. None of the victims wanted compensation because most of the combined cost of almost \$2000 had been covered by insurance. The father and son made a proposal to reimburse the insurance companies. The father agreed to pay the entire sum and the son would pay him back with the money from his first full time job, which he was about to start. The agreement worked perfectly. (Incidentally, if the son had been sent to court and had been given a criminal record he would have lost his job.)

The discussion has studiously avoided stating that parents *must* be involved in discussions about undertakings or enlisted into magnanimous undertakings where possible. Again,

facilitators' astuteness and skill will determine where this is appropriate. Theoretically, however, restorative justice needs to accept the possibility that significant parental involvement in undertakings can be entirely restorative. Just as restorativists accept risks of re-victimisation and stigmatisation, so too should the risk of disempowerment of young people be weighed against the potential gains of parental involvement in undertakings.

7.3.1.3 Support of family and friends

If restorative justice seeks to enlist the support of 'significant others' or a community of concern for an offender should the same interest be extended to parents? Certainly I have argued that parents with low parental self-efficacy may very well need supporters for themselves as well as supporters for their children. Damaging parents' confidence or labelling parents as 'ineffective', 'inept' or 'neglectful' are some of the concerns raised. As noted above, further ramifications may include aggravating some of the factors initially related to the offender's crime (see Maxwell & Morris, 1999). Supporters, especially for parents with a wavering confidence in their own abilities, may be able to prevent or offset these occurrences. The best example of this concerned a single mother who openly stated that she did not have good relations with her 14 year-old son. Fortunately, the mother's sister had been invited to the conference as well. This woman ('older sister' and 'aunt') had strong bonds with both the mother and the son – in fact the youth often spent a lot of time at her house. Her strong and positive personality salvaged the conference and provided a much needed bridge between the parent and child. At different stages she made positive comments about both individuals and intimated that the friction between the mother and son would soon pass.

However, it cannot be assumed that the supporters of the youth make equally good supporters for parents. In fact, the supporters may not even know the parents – consider a netball coach or teacher. Thus, where practitioners detect in the preparatory stages to a conference that a parent is particularly nervous or apprehensive it may be beneficial to identify and invite someone who can offer the parent emotional support. In terms of theory, clearly the concept of the community concern needs to be expanded when the realities of parent-child dynamics are considered.

7.3.1.4 Forgiveness

Usually if an apology is offered, forgiveness is desired. It is logical to conclude that if some parents apologise to victims or whole conference groups that forgiveness – though not expected or demanded – would be valued by the parents. Forgiveness may be important to avoid damaging the confidence of those parents with a low parental self-efficacy. On two occasions when parents offered apologies, victims replied with comments that indicated that they did not consider the parent at fault at all. This is more a vindication than forgiveness but probably was appreciated by the parents nevertheless. Certainly victims cannot be asked to forgive parents. Yet, just as forgiveness may occur symbolically between the victim and the offender so too may symbolic forgiveness be possible for the parent. Being allowed by the victim to contribute in some way to the youth's undertakings may represent forgiveness for parents. Talking to the victim after the conference, sharing a hot drink, a handshake may all be valid means through which parents experience forgiveness. What of victimless crimes or conferences where the victim does not attend? Perhaps the comments of other participants are still meaningful to parents in this regard? Future research will need to explore the issue of parental forgiveness. At least theoretically, if parents can often feel partly to blame for the actions for their child, restorative justice can entertain that forgiveness or something like forgiveness – possibly understanding – maybe important aspects of their healing process.

7.3.1.5 Managing different parental behaviours

Restorative justice cannot treat parents as co-offenders and the case against shaming parents in conferences or forcing them to apologise has been clearly argued. However, sometimes parental behaviour is unfair to the extent that it impinges upon the restorativeness of a conference and exaggerates the culpability of the youth unfairly. How are parental behaviours that are unfair to the youth to be managed?

In my earlier paper I noted a number of ways in which parents appeared to 'defend' themselves in conferences which in some way diminished their degree of responsibility. Defences occurred in at least 17 conferences. The most serious defences were open criticisms of their child and these were particularly worrying in terms of stigmatising the young offender as well as causing the conference to be unfair. Mentioned previously was a conference where the mother admitted to aiding and abetting her son's shoplifting, spoke about her difficulty with budgeting and indicated that she had a problem with

alcohol. The mother and son appeared in a second conference. This time she denied having any knowledge of the offence despite the fact that the shop-owner victim stated that he saw her standing outside the store and that she appeared to be drinking alcohol. Knowing that only the police officer and myself knew of the previous conference she maintained a high moral ground and expressed deep disappointment with her son's actions. The conference appeared to be a farce and dangerously stigmatising for the youth. In this case it seemed that because the mother was the youth's only supporter she could project herself as she wished. A larger community of concern probably would have dramatically changed the context of the conference. Wider family members might have naturally spoken of the home life and reproached the mother indirectly. They may have also defended the boy – as did a participant witnessing a vicious parental attack in a conference observed by other researchers (Braithwaite & Mugford, 1994). These types of strategies, rather than open confrontation, are ways in which parents can be faced with their responsibilities.

Similarly a broader community of concern may have altered the context of a conference during which an intoxicated father stared and frowned accusingly at his son for the entire time that the two victims described the impact of his son's vandalism. The comments made by the father focussed on his 11-year-old son's 'choices' and appeared to minimise the father's proximity to this aspect of his son's life. (In contrast, the father was happy to point out that his son's athleticism mirrored his own as a youth.)¹⁰⁷ Other facts indicated that the boy's home life and daily routine were unstable, such as the irregular times at which he arrived at school. At the end of the conference the father gave his son five dollars to take a taxi home and mentioned that he would be home later in the evening.

Other criticisms that parents make of their children are more subtle. In seven other conferences parents mentioned that they did not 'get along with' their child. Some parents highlighted the difficulties they had faced in controlling the youth, for example 'I never know where he is – he stays at his friend's half the time'. On eight separate occasions parents mentioned that their son or daughter had been diagnosed with one or more psychological disorders. Admittedly such diagnoses may be highly relevant to a conference and three of the parents broached the issue with sensitivity. However, other

¹⁰⁷ Reflecting on my observations, Dr Richard Young (pers. comm., 14/09/2002) drew attention to an old saying: 'Success has many parents, but failure is an orphan'. See Young (2001) on the evaluation of restorative police cautioning in England.

parents mentioned diagnoses, particularly attention deficit disorder and attention hyperactivity disorder, with surprising frankness. Possibly these parents are simply accustomed to discussing this information. However, it is suggested that in some instances diagnoses are presented by parents as, amongst other things, reasons why the offence committed by their child does not reflect upon themselves – a clinical explanation of their blamelessness. The danger of such ploys is that they may stigmatise the young person and rob them of the vital supportive bonds needed during the conference.

Future research will need to identify strategies for dealing with such parental behaviours. I did observe one seemingly appropriate direct comment to a parent. A youth aged 16 had driven a car without a license. It very much appeared as if the parents had arranged for the youth to live with and care for his grandmother – who suffered from dementia. The mother repeatedly tried to distance herself from her son and his criminal actions and stated 'He's a young man now. He does what he likes'. The facilitator replied, 'Yes, but you're his mother'. This quite gentle comment seemed to ask the mother to love her son supportively. The mother's attempts to distance herself from her son's actions ceased after this point.

I have also proposed that when parents vehemently try to diminish their child's culpability they may be partly motivated by a desire to defend themselves. Behaviours of this type were observed in 21 conferences. It was quite common for parents to assert that their daughter or son had fallen into a bad crowd and had been 'led on' and that the friends were more to blame. Interestingly, no parent pointed out that their child was the leader of a gang that had led others astray. Perhaps these and other parental behaviours would diminish if – during the preparation and running of a conference – parents were reassured that the conference was not focusing on their abilities. The Wagga model, for instance, requires a standard introductory statement from facilitators; 'We are not here to decide whether [the offender] is a good or a bad person'. Should similar comments be paid to parents?

A further complexity for restorative theorists and practitioners is that many parental defences are legitimate and helpful in the conference. Some are helpful because they identify genuine problems that the youth and his family are facing. For instance, both

the mother and father of one young offender stood up in their conference, burst into tears and said 'You have no idea what we have been through! We've tried everything'. This was the turning point in the conference that led on to open discussion about the youth's drug addiction. Other milder defences signal to the conference participants that the offensive behaviour by the child was an aberration, such as descriptions of the progress of other children in the family or positive statements about the offender's school performance. Other than the fact that such information may be important to victims (Maxwell & Morris, 1999), the comments may help the parents to maintain their parental self-efficacy during the conference.

Conjecture may stretch to consider why some parents refuse to attend conferences. Of course work or other commitments, disinterest, lack of transport and any number of ordinary reasons may prevent parents from attending a conference. However, at the conclusion of one conference the mother of the offender actually stated that her husband chose not to come to the conference because he felt 'too embarrassed to meet you all after what [my son] did'. Thirteen of the 67 conferences were held without parents or guardians. Of the remaining 54 conferences, only 15 involved fathers (although in some conferences with multiple offenders more than one father attended) compared to 33 conferences at which a mother participated. Certainly many gender issues could be explored here. But the first concern of genuinely restorative conferences should be to adapt to the needs of those parents who simply find it too difficult to attend a conference, perhaps best done in the conference preparation stage. Each case should be treated carefully even if apparently quite trivial. For instance, one small conference involved the theft of a jacket by a 15 year-old girl. Her father cried on three occasions and admitted he found the conference very difficult. In this instance the girl's parents had refused to financially support her living away from home because they knew her housemates were involved in drug use. 'I feel I'm responsible', the father stated because his daughter intended to sell the jacket to buy food. The worldly demeanour of the girl evaporated at this point. She also began to cry, sobbed 'I hate seeing dad like this', and went on to ask her father for forgiveness and if she could move back home with her parents. 'I just want to go home and hug mum and tell her I'm sorry', she added. Her mother was not present at the conference. That this occurred in this conference and not ones involving far more serious crimes is due to the *unpredictable* 'genius of restorative

circles' (Braithwaite, J. & Braithwaite, V., 2001: 59). What opportunities were missed in those conferences where neither or only one of the parents attended?

How should restorative conferences respond to cases where the offender's parents are separated? Again, practitioners should respond to the sensitivities of each conference. However, separation or divorce by itself should not exclude either parent. Seventeen of the 67 conferences that I attended mentioned separation or divorce, though the actual number was probably higher. A vast amount of literature refers to the roles of mothers and fathers in all stages of child and adolescent development (Lamb, 1996). Arguably often youths would benefit enormously from the support of both parents at the conference – which for many youths is a 'crisis', if not a very tense situation. It may well be that both parents would also benefit from attending. In terms of parental self-efficacy it could be an upsetting part of a parent's personal history that they were not involved in a time of need for their child, or not invited to offer their love (Bandura, 1989; Coleman & Karraker, 1997). Likewise, it does not seem appropriate for the only supporter of an offender to be a step-parent, though this depends on the bond between the step-parent and the child. Clearly the new partner of the father of one 12-year-old offender – who had been living with the family for three weeks – did not seem an adequate sole supporter.

There is one final aspect of parental behaviour to consider in regards to 'parents as contributors'. On four separate occasions parents raised, of their own accord, the topic of their own criminal histories or the misdeeds of other members of their family. One grandmother mentioned that the only member of the family with a 'criminal record' was her husband who had committed a traffic offence in the 1960s. The purpose of this information seemed partly motivated by establishing the law-abiding credentials of the family. Yet, other examples are not as easily explained. One father told me before a conference that he had 'done a stint' in prison. Similarly, another father informed the conference group about work orders that he had once completed. And, in a conference held for the theft of two bottles of shampoo by a 13 year-old girl, the mother chatted about the \$1000 worth of confectionary that her intellectually disabled son had once stolen and mentioned how awful it had been visiting her husband in prison. 'He only went there for traffic offences, you know', she added. These intriguing responses could attract complex psychological theories. Why do these adults volunteer such personal

information that seems removed and unrelated to often petty offences committed by their children? Perhaps, like some offenders, they are struggling with their ethical self-identity (Ahmed et al., 2001)? Whatever the motivation, the examples offer further evidence that parents feel intimately connected with the acts of their child and indeed the acts of their family. Restorative practitioners might take such comments from parents as important signals that they are finding the conference personally difficult and that they feel 'on trial'. Then special care should be taken to avoid damaging the parents' self-efficacy and in some way seek their restoration. One of the fathers mentioned above was the one who commented 'We're not bad people' and heavily involved himself in what was ostensibly his son's undertakings. This seemed to be an occasion on which restorative justice expanded to care for a parent's healing.

7.3.2. Parents as victims

How can parents be 'victims' to a crime committed by their child? Parents are sometimes the victim of their child's actions in the strict legal sense; mothers are bashed by their sons, the family car is used for a joy-ride and crashed, money is stolen from the home and so on. In the remainder of cases, no matter how much the parent has contributed to an offence in their own view, the youth still has chosen to commit a criminal act and that decision often has material and emotional ramifications for the parents. In fact, parents are sometimes the most affected parties, particularly in 'victimless' crimes. Arguably, apart from those rare cases where the parents actually incite the criminal behaviour, all parents to some degree fall into the fluid restorative category of victim. Parents often are affected materially by the undertakings arising from the conference: the inconvenience of providing travel over a period of weeks or an agreement to compensate a victim many hundreds of dollars. Surely even where the undertakings are suggested by the parent, as in the examples of 'magnanimous undertakings', this is still an effect of the youth's actions. Emotional impacts on parents are varied. Many parents appeared simply embarrassed at having to attend a conference and weather the 'assessment' of the other adults involved. Others spoke about the worry that the crime had caused them at the time they were informed – sometimes by way of a midnight telephone call from a police officer. Very clearly there were instances where the parents' worry concerned their child's future, especially where the juvenile was a repeat offender. In this sense the parents can suffer because of their deep love for their

daughter or son. Where a sense of responsibility is felt, parents possibly experience emotions akin to guilt or shame – as was most clearly expressed by the father, mentioned above, who had refused to financially support his daughter's living arrangements. Essentially this cuts at the root of the contributor-victim paradox. That is, the negative emotions that parents experience because of their perceived contribution to the offence are the very same emotions that categorise parents as victims. Well over half of the parents who attended conferences mentioned a sense of a breach of trust. Most often this seemed to refer to the freedoms that parents had given to the youth on the understanding – spoken or unspoken – that they behaved well. Sometimes very deliberate deception was involved, for instance where the youth had lied about where they were going on a particular night, who they mixed with or how they were spending their time after school. Less frequently, the parents identified so closely with the victim that the offence seem to incense and confront the parents in a personal way. Nowhere was this more evident than in four separate shop-lifting cases where the parents themselves were shopkeepers. The parents found it difficult to understand how their child could commit such an offence when they were well aware of the effect of shoplifting upon their own family. In almost every conference attended by parents the group at some time spoke about the impact upon the parents of the offender's behaviour. In 19 conferences observed the offender apologised to their parent at the end of the conference, though this was sometimes prompted by the facilitator.

If restorative justice values fluidity in the categorisation of the participants, it should be accepted that (a) parents can be 'victims' of crime that are in need of healing, and (b) this need for healing should not be ignored even if parents simultaneously cast themselves as contributors to the offence. Some of the goals that restorative justice holds for victims were discussed above (7.2.2). The opportunity to understand why the offence occurred may be relevant to some parents, especially when the conference involves several offenders and parents are keen to hear a more rounded version of events than that offered by their child. But generally, the 'offender' is not an enigma to the parents in the same sense as, for example, the victim of a burglary. Likewise, generally it is hard to imagine that parents need to be able to assess whether they will be the likely target of crime again as do other victims.

However, the other two restorative goals mentioned above are arguably very important for parents-as-victims. That is, the opportunity to *express* forgiveness, and, symbolic and tangible evidence that the offender and the community recognise their injury.

Forgiveness by parents may have been underestimated in its importance in youth crime. Braithwaite and his colleagues draw attention to the work of Zhang and Zhang (2000: cited in Ahmed et al., 2001), a Chinese study that found parental forgiveness was a predictor of non-reconviction. Ahmed et al. (2001) see the relevance of the finding in terms of avoiding the stigmatisation of the offender. However, it might also be questioned whether the act of forgiveness benefited both the child and parents by repairing the damage done to their relationship. Or, for those parents who feel they are 'on trial', perhaps parental forgiveness during a conference is welcome evidence of the efficacy of their parenting abilities.

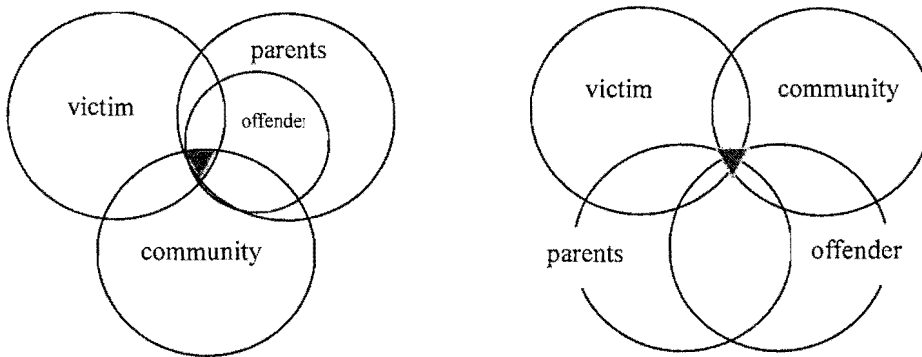
The scripts used by both the DHHS and police facilitators undoubtedly assisted recognition of parental injury. The scripts remind facilitators to ask the offender who they think were affected by their actions. If the youth did not mention their parents initially in the vast majority of cases the facilitators would ask 'What about mum and/or dad?'. Additionally, parents were routinely asked to describe the impact of the crime upon their life. Consequently there were a variety of ways in which the offender and the community gave recognition to parents' injury. As mentioned above, 19 conferences included an apology by the child to the parent. Mentioned also were two occasions when victims verbally 'vindicated' the parents. One of the most dramatic instances concerned the mother referred to above who challenged the conference group 'You have no idea what we have been through'. The demeanour of one of the victims instantly changed from aggression directed at the youth to empathy for the crying mother, whom she escorted from the conference room. On several occasions victims drew the youth's attention to the impact that the offence had upon parents – 'look what your mum has been through'. Three times victims stated that they did not want compensation from the youth because it was obvious the real source of the money would be the parents. Yet the training of both DHHS and police facilitators views discussion of parental injury in conferences as important mainly for the youth to (a) understand the impact of the crime and (b) experience emotions such as remorse or shame. Similarly, the wider restorative literature has not considered the importance of recognising parental injury for the sake of healing the parents.

7.4 REMODELLING RESTORATIVE JUSTICE FOR PARENTS – A CONCLUSION

Two major concerns have been tackled in this chapter. The first is the most pressing: how to avoid the stigmatisation of the parents of young offenders in restorative forums, such as conferences. The second considers how the parents of juvenile offenders may be truly restored after the impact of the crime. Neither of these concerns have been recognized sufficiently in the restorative literature, which has to date focussed on victims, offenders, and communities. It has been argued that the special nature of parent-child dynamics means that some of the same goals which restorative justice holds for victims and offenders, should apply also to parents. This so because parents often relate so closely to the offender – with whom their life is intertwined emotionally and practically – that they may identify themselves with the actions of their child and classify themselves as a ‘contributor’. In other instances parents may identify themselves as a ‘victim’ of their child’s offence. Frequently parents will fall into both categories in the same restorative conference.

How is restorative theory to adapt to this? By recognising parents – in juvenile crime at least – as a unique party to the resolution of crime that have a unique relationship with the offender. If we are to move beyond conceptualising the major parties of restorative justice as including the parents in addition to the victim, offender, and the community it is worth reviewing the Bazemore’s (1998) model that was presented above in Figure 7.1. Two slightly different models are presented below for discussion in Figure 7.3.

Figure 7.3 Alternative models for the interaction of victims, offenders, parents, and communities in restorative justice.



The model on the left is probably more applicable to very young offenders – those we might consider to be children rather than adolescents. Notwithstanding, individual differences in maturation mean that age is not determinative of when this model may apply. The key aspect of the left model is the heavy reliance of the offender upon the parents and their mutual wish to deal with the aftermath of the crime almost as one unit. The parents nonetheless also share more in common with the victim than does the offender. There is also ground between the victim and the parents that the offender does not share at all, symbolising the parents' victimhood. Yet some would be uncomfortable with the lack of personal identity that is represented for the offender in the left model. Thus the right model emphasises the offender's autonomy and individuality as well as their ability to interact with victims and the community in their own manner. The right model is more applicable to older or more mature youths with stronger identities and who are more responsible for their own actions. In this sense the models are also drawing on Figure 7.2 that represented the decreasing responsibility of parents with the increasing age of children. Another interpretation of the models is differences not in the age of the offender but differences in the strength of the bond between parent and child. The left model perhaps captures something of strong, loving relationships where the offender identifies very closely with the parent. In comparison, the right model indicates that – whether loving or not – (a) the youth does not identify with closely with the parents, or (b) the parents do not feel partly responsible for the actions of their child. In any event neither model is intended to be exact, but rather to encapsulate a concept.

Areas for future research have been identified repeatedly through this chapter. No real consideration has been made of the complexities of relationships between youths and stepparents or adoptive parents. In the main this is because of a lack of qualitative data pertaining to that situation. But also the parental self-efficacy literature critical to the arguments formed in this discussion has not extended itself beyond biological parents for the time being (Coleman & Karraker, 1997). It is worth noting, however, that in one conference an adoptive mother cried when hearing of the damage caused by her son. A larger question is whether the issues discussed in this chapter apply in any way to adult offenders. Certainly the mother of an adult murderer apologised to the victim's parents in a filmed conference (*Facing the Demons* (video recording) 1 June 1999, ABC Television). It may be that some identical dynamics take place between parents of juveniles and the parents of adults.

CHAPTER EIGHT

KEY FINDINGS AND IMPLICATIONS FOR CONFERENCING, RESTORATIVE JUSTICE, AND CRIMINOLOGY

This study began in January 2000, at a very interesting time in the history of juvenile justice in Tasmania. February 2000 saw the inauguration of a new system, which was influenced by 'a humanistic vision of an inclusive, interpersonal and problem-solving alternative to the traditional adversarial system of justice' (Crawford & Newburn, 2003: 21). This new vision of criminal justice, called 'restorative justice', was not the main cause of the changes made in Tasmania. In fact, one of the simpler contributions that this thesis has made is to chronicle the wide variety of policies, ideas, and practices that shaped the new system. Most of these influences predated restorative justice (3.7.7). But what unmistakably marks Tasmania for restorativists is its wide-scale implementation of juvenile conferences, a practice which is now a major international flag bearer for restorative justice.

Analysing the Tasmanian youth justice system during this period has been valuable for three reasons. First, the research represents an important initial evaluation for conferencing practitioners, administrators, and policy developers in Tasmania. Secondly, key issues in conferencing have been explored and a wide variety of practical issues identified that deserve consideration in conferencing schemes in Australia and in other countries. Thirdly, completely new theoretical ground has been surveyed that challenges restorative justice to reassess some of its fundamental tenets.

Despite its small size the present study has a number of strengths. Most apparent is its mix of complementary quantitative and qualitative research techniques that have targeted well defined and achievable research objectives. The empirical research can be viewed in two halves. One half involved the steps taken to give a broad overview of the system's performance over an 11 year period. This included:

- sourcing an official database suitable to address essential research questions,
- 60 to 70 hours transforming raw data into a format ready for statistical analysis,
- and 10 hours or so performing the statistical analyses.

The other half of the empirical research focused on ‘grass roots’ practices in Tasmania. Questionnaires were developed and 67 (police-run and independently facilitated) conferences observed, although the questionnaires were only employed in 61 of these conferences. Four days were spent observing facilitator training. Finally, numerous interviews and conversations were held with key stakeholders. But the empirical findings have not been presented without a context. The thesis has provided a rounded background of international restorative theory as well as historical developments in juvenile justice in Australia and Tasmania. As a result some of the conclusions arising out of this research bridge across theory, policy, and practice.

This short final chapter has a simple structure. It reviews some of the most important findings from chapters four to seven and considers broader implications.

8.1 SYSTEMS AND AGENCIES

The results derived from the central police database in Tasmania are encouraging. They suggest that some important ‘macro’ aims of the juvenile justice system have been achieved. Over the course of a decade the number of youths being sent to court has reduced by about 700%. This means that fewer youths will be exposed to the stigmatizing effects of court experiences (Farrington, 1977). With a corresponding decrease in the frequency of admonish and discharge orders given by Tasmanian courts, it appears that the bulk of youths who have been diverted away from court were those who had committed minor offences. Therefore Tasmania’s courts have been relieved of an expensive (and arguably irrational) burden – the processing of hundreds of minor matters (Briscoe & Warner, 1986). As juvenile court appearances decreased the numbers of young people dealt with by way of diversionary procedures, namely cautions and conferences, increased. Importantly, whilst diversionary procedures were used more frequently across the last decade, net-widening does not seem to have occurred. That is, the total number of youths having some type of formal contact with the justice system – be it through a caution, conference, or court hearing – has not risen. In fact, although

there have been fluctuations from year to year, there are some faint indications that the total number of youths dealt with may decrease in the coming years. In part this may be attributed to Tasmania's declining population.

For those interested in police involvement in diversionary schemes the Tasmanian story is important. Tasmania's experience suggests that the police can responsibly act as the primary gate-keepers to a diversionary system. Clearly they have channelled large numbers of cases away from court. Arguably this indicates a belief in the usefulness of diversion. It also suggests that if the view of court as a 'short, sharp shock' (Sarre, 1999: 246) still exists amongst police officers, it is not a view shared widely by those involved in gate-keeping. The gate-keepers have also referred 10% of youth cases to the conferencing scheme conducted by the Department of Health and Human Services (DHHS). There does not appear to have been reluctance by the police to refer cases to the DHHS. On the other hand, police enthusiasm for diversion does not seem to have been translated into an expansion of the numbers of juveniles dealt with formally, as has occurred in Western Australia. In these respects the Tasmanian gate-keeping system has performed as well as or better than all other Australian systems. However, New Zealand's mandatory gate-keeping system still stands out in terms of low levels of court referrals (Power, 2000). As noted, the positive signs that this study has revealed need to be substantiated by future research. It is important to find out the social and offence profile of the youths that the police tend to channel to different tiers. Critics of the way in which police forces behave would not be surprised if evidence of bias appeared in the way the police dealt with, *inter alia*, youths from disadvantaged backgrounds (Polk, 1994; Sandor, 1993).

The positive findings presented in chapter four may be partly attributable to two features of the system introduced by the *Youth Justice Act 1997* (Tas). First, the agreements reached in 'formal cautions' (police conferences) are not enforceable at court if the youth failed to complete them (unlike formal cautions in South Australia). It is argued that this probably encourages the police to divert more serious cases to DHHS conferences because the undertakings agreed upon in these conferences *are* enforceable at court. If the Act was amended to make the undertakings reached in police conferences enforceable – as some police officers have argued should occur – there would be less impetus for the police to divert youths to DHHS conferences. For this reason I

would suggest that the undertakings agreed to in police conferences should remain unenforceable at court. Secondly, the court's ability to refer matters directly to DHHS conferences undoubtedly influences police gate-keeping. Lennox mentioned that he views such court referrals as a 'slap on the wrist': a message from the bench to the police that they erred in their gate-keeping decision. This has only occurred to one matter that Lennox referred to court. Currently it appears that the police believe that to a certain extent increasing court referrals would be futile because the courts would simply refer the matters to the DHHS. It is unclear to what extent these two structural aspects of the youth justice system encourage good gate-keeping practices amongst the police. However, it is argued that they constitute a legislative safeguard of sorts that should not be removed or altered lightly.

What broader lessons can be gleamed from the Tasmanian experience? Perhaps the first point is that dramatic changes can take place within the sub-cultures of government agencies, including the police, without legislation. As noted in chapter three, in the course of 12 years official police perspectives of court changed markedly. In 1986 the Commissioner for Police expressed confidence in the austerity of court proceedings and the effect of the austerity in discouraging juvenile criminality (Briscoe & Warner, 1986). By 1998 this view was portrayed as antiquated and an *obstacle* to good practice in policing juveniles. To some extent this change might be attributable to the influence of junior officers upon the force, rather than the calculated decisions of the senior ranks. During the same period it appears that significant developments were taking place in the way the welfare agencies perceived their role. The fact that welfare workers struck agreements with magistrates to minimize the use of indeterminate sentences should be underscored. It represents a willingness amongst the welfare sector and the judiciary to embrace new ideas and put them into practice prior to legislative change.

Quite evident in this thesis is the good quality of the relationship that the police and welfare agencies have in the juvenile justice sector. In one sense it could be said that these two bodies have reaped the benefits of maintaining rapport over decades. Certainly a variety of different scenarios can be imagined if relations were sour. The police might have referred fewer cases to the DHHS, or the police officers attending DHHS conferences might have refused to agree to undertakings (and thereby forced cases to court). For their part the DHHS could have contested the power of police

to conduct ‘formal cautions’ as conferences. Instead the police often involve the DHHS in gate-keeping decisions. Relations between DHHS facilitators and police facilitators – which could have been marred by competition and rivalry – are sound; DHHS facilitators often ask police facilitators for feedback on their practices; dual refresher courses have been planned. Many of these realities might be unthinkable in other jurisdictions in which the police and welfare agencies clash. These reflections might be of interest to jurisdictions contemplating the introduction of restorative schemes. What degree of synergy already exists between the agencies which are going to become key stakeholders? What problems in the relations between these agencies can be anticipated with the introduction of a new system? Can these problems be circumvented by legislation? Of course synergy and amiability can spawn their own problems. Both the police and the DHHS in Tasmania should guard against excessive sensitivity. For instance, the DHHS should be prepared to play an important role in protecting the legal rights of young people and the police should accept that role as a part of the system of checks and balances.

8.2 DEVELOPING AND MAINTAINING PROFESSIONAL PRACTICE STANDARDS AMONGST CONFERENCE FACILITATORS

In regards to the recruitment of trainees, this thesis made it abundantly clear that involuntary recruitment is inadvisable. That is, situations where individuals are required or obliged to fill the role of a conference facilitator. The main concern is that if individuals are disinterested in facilitating conferences there is a good chance they do not have the skills necessary to do so nor the impetus to acquire those skills. In a different field Martin (1998) found that voluntary involvement in training tended to allow for the self-selection of individuals who naturally made good trainees. Involuntary recruitment does not allow self-selection to take place and increases the chances of bad trainees being recruited. Administrators should also be wary of thinking that they can pick who would ‘make a good facilitator’. However accurate their assessment may be, disinterest hampers learning (Krapp, 1999). There is the risk that feeling that one had ‘ended up’ in a training course for conference facilitators would engender disinterest and reduce the effectiveness of the course.

Increasing emphasis is being placed upon the proper training of restorative justice

practitioners internationally (Van Ness, 2003). In regards to the reliance on reintegrative shaming theory to train police facilitators – a fundamental aspect of the Wagga model of conferencing – the findings of this study reiterate the warnings of Braithwaite himself; incomplete or inaccurate descriptions of reintegrative shaming run the risk of generating facilitators who envision conferences as shaming machines (Braithwaite, 1999; Braithwaite, J. & Braithwaite, V., 2001). More generally, the discussion in chapter five highlighted two observations made by researchers: (a) that regardless of the amount of training they receive, some individuals will never make good restorative justice facilitators, and (b) the length of training provided for restorative facilitators depends on the complexity of the forum that they will convene (Braithwaite, J. & Braithwaite, V., 2001). In jurisdictions like Tasmania, where the restorative forums can deal with very complex cases, it is recommended that the training include two important features. Both of these features are already present in one well-recognized training course, designed by *Transformative Justice Australia* (TJA) (Moore, 2002). First, the training should employ role-playing sessions as a means of teaching the trainees how to brief participants in preparation for a conference *and* how to facilitate a conference. Arguably there is a limit to the usefulness of describing the emotional dynamics of restorative justice to trainees. Role-playing is an opportunity to witness those dynamics, even though the emotions are ‘acted’ in a sense. Role-playing is valued in other disciplines and fields where human interaction is taught (Plous, 2000; Cockrum, 1993; McGregor, 1993). Role-playing can be used not only in initial training, but also in refresher or top-up training to strengthen the skills of already experienced practitioners (Razavi et al., 2000). The second important feature of training referred to above is that the training should involve assessment. That is, accreditation as a facilitator should involve some form of examination of one’s abilities as a facilitator during the training course. Of course, it makes sense that assessment occurs during the role-playing exercises. The purpose of the assessment should be to determine whether each trainee has certain basic communication skills that are fundamental to conference facilitation.

One practice employed in Tasmania that other jurisdictions may be interested in is the use of a buddy system between facilitators. Newly trained facilitators are linked with an experienced facilitator to act as a type of mentor. This continues training in a sense well into the early practical experience of a new facilitator. It is very clear from the comments made by DHHS facilitators that a sense of isolation was a problem for some. The

buddy system was one method for overcoming that isolation. This leads onto the topic of monitoring practice standards. It hardly needs to be reiterated that some sort of monitoring is essential in restorative justice schemes (Van Ness, 2003). It is essential in the negative sense to prevent poor practices developing. But more important, it is essential to (a) improve skills, (b) disseminate knowledge, skills, and experiences between facilitators, and (c) maintain a sense of identity and even collegiality amongst facilitators. As noted, monitoring can identify the weaknesses and strengths of the training provided for facilitators.

8.3 CONFERENCING PRACTICES

One of the striking features of the Tasmanian diversionary system is its incorporation of both police-run conferences and independently facilitated conferences. Chapter three discussed how to a large degree this system evolved in an unreflective and unplanned manner. The research took the opportunity to compare police conferencing practices with those of the independent (DHHS) facilitators in the same setting. Many of the criticisms made of the police facilitators seemed to have quite identifiable causes. For instance, the worst police facilitator observed should not have been forced into conferencing in the first place. Misconceptions of conferencing and the use of shame seemed to be attributable to the training provided for the police facilitators and the content on reintegrative shaming. Likewise, the short periods of time that police facilitators spent preparing their conferences seemed primarily due to time constraints. These are serious issues which need to be addressed. Notwithstanding, a core of police officers appeared to be able to facilitate conferences in a restorative way. *Inside the conference-room*, their practice were substantively similar to the DHHS facilitators. This suggests that there did not seem to be any quintessential difference between police and independent facilitators.

In chapter two I suggested some researchers in the United Kingdom appeared to have a 'resigned pragmatism' towards the power of the police to conduct restorative cautions and conferences (Young, 2001). The same could be said of this thesis; my own view of police conferences in Tasmania is that, first, it would be very difficult to prevent them, even if the relevant statutory provisions were clearer. But more important, I believe that successfully preventing the police from facilitating conferences would have a

deleterious effect on (a) the sub-culture of the police force itself, and (b) the good relations between the police and the DHHS that underpin the new juvenile justice system. Perhaps the long-term integrity of the juvenile justice system in Tasmania depends upon the police rationally recognizing the considerable power that they have in formal cautions/conferences. A common strategic agenda for the police and the DHHS is to devise a structure which checks this power, and does not rely upon the discretion of the dedicated officers who currently work in this field. Breaches of due process for juveniles over several decades was eventually a primary cause for the undoing of the welfare model. This historical development should stand as a warning to those policy developers who would like to see restorative justice and conferencing alive and well in Tasmania in 20 years. Following on from this point, it seems the police may need to develop strategies to maintain enthusiasm in the force for diversionary processes. This might include identifying new officers who demonstrate skills and interests relevant to restorative justice. In short, the police should be wary on depending too heavily upon a few individual officers.

This thesis identified a 'catch 22' that needs to be addressed in the restorative literature. For some years now it has been clearly understood that restorative justice faces difficult hurdles if it intends to provide young people with the same legal safeguards that they are granted in the traditional criminal justice system. One such safeguard that the traditional justice system tries to provide all offenders is proportionality: the principle that the sentences given to offenders are proportionate to the seriousness of the offence that they committed and their culpability (Warner, 1994). Indeed the issue of proportionality has been one of the major bones of contention between restorativists and deserts theorists (Braithwaite, 2003; von Hirsch et al., 2003).

In theory at least, proportionality can be assured in the court system by a highly trained and dispassionate judge or magistrate. But since restorative justice has turned its back on the court system, how is it to import some semblance of proportionality? Although it was never couched in these terms, the DHHS in Tasmania attempted to introduce proportionality into its conferencing system. It was motivated to do so because the outcomes that groups were agreeing to were frequently too much for the young offender to cope with. Frequently it seemed that onerous undertakings were agreed upon enthusiastically. The problem was, that in the optimistic climate of the conference

room, participants over estimated achievable undertakings for offenders given the support they were provided. To overcome this problem the DHHS sought to try and limit the undertakings by ‘suggesting’ appropriate outcomes to the participants before the conferences. This practice had the desired effect of making the outcomes agreed much more achievable for the young offenders. However, it seemed to ‘sterilise’ the conferences to a degree. Amongst other things the participants seemed disempowered – they tended to more frequently forego their right to suggest undertakings, leaving the decision to the ‘professionals’. Spontaneity, honesty, and open participation seemed to be replaced with a degree of artificiality. Perhaps experienced and astute restorative practitioners can solve this problem. Does the answer lie in spontaneity? For instance, perhaps facilitators could begin conferences by openly stating that care must be taken not to ask too much of the offender – not only for her or his sake but to avoid disappointing the victim as well.

Artificiality appeared to affect conferences in other ways. Chapter six discussed a number of cases where the young person attending a conference had other matters pending – that is, set dates for another conference or even court appearances. Common sense suggests that it would be difficult for a young person to genuinely feel a sense of closure after a conference if they still had other criminal matters to be dealt with. This must be especially difficult if the matters pending are serious. Consideration must be given also to the feelings of victims if they learn about the ‘other matters’. Perhaps it is more difficult for them to experience closure too. Evidently the police gate-keepers need to take care to avoid ‘artificiality’ as well. In one case it seemed that the police could have dealt it with the offence immediately, rather than referring the matter to a police conference. By referring the case to a conference the police unnecessarily delayed justice in a small neighbourhood and exacerbated the victim’s feeling of anger. This is one negative effect of net-widening that has not been recognized in the restorative literature.

8.4 PARENTS IN RESTORATIVE JUSTICE

Crawford and Newburn (2003: 19) suggest that for the most part restorative justice can be viewed as ‘practice in search of theory’. They contend that restorative theory has been characterized by ambiguity and it is desperately trying to catch up to the diverse restorative practices which are taking root all over the world. Because restorative

justice relies on the stuff of human interaction, emotion is one of its key concerns. This is true of all the emerging (and even competing) restorative ideologies. Emotion is an important element in the restorative construct of harm. The fear, distress, anger and so on of victims is of paramount concern in restorative justice, which aims to take these negative feelings 'away'. So too restorative justice, in its humanistic vision, is concerned with 'taking away' the negative feelings of the offender, such as rejection and self-loathing. Often restorativists are concerned with emotions in the community, especially fear of crime and a loss of a sense of peace. Aside from harm, the importance of emotion in restorative justice is intertwined with its capacity to reduce crime. Feelings experienced by offenders such as remorse (Maxwell & Morris, 1999), guilt, and shame (Ahmed et al., 2001) appear to be quite important in this respect.

This thesis has opened up a whole new avenue that restorative theory needs to explore in its quest to understand restorative practice. In essence this new avenue concerns the emotions of the parents of young offenders. These emotions should be of interest to restorativists because they both (a) constitute a harm suffered as the result of crime, and (b) can be related to the effectiveness of restorative justice to reduce crime.

I have argued that in many practical ways parents can feel that they partly contributed to the offence committed by their child. At the same time they can legitimately view themselves as victims of the offence – because of emotional or material harm. This I called the 'contributor-victim paradox'. Chapter seven explored various features of the contributor-victim paradox and numerous issues for practitioners to manage these emotions.

One of the guiding concepts of chapter seven is that parents' perception of themselves can be melded to their perceptions of their children. The most useful literature that I drew on to support this argument is recent psychology research on parental self-efficacy (Coleman & Karraker, 1997). This suggests that perceptions of one's ability as a parent is closely bound to self-perception. I have taken this assertion one step further and argued that surely the most concrete gauge of one's ability as a parent *are* one's children. The 'successes' of their children may draw parents to conclude that they are good at parenting. This belief might help to engender an overall positive view of one's self. On the other hand, the 'failures' of our children may tempt parents to conclude that they

are bad at parenting. This belief might engender negative views of one's self. Arguably crimes committed by children, depending of their frequency and seriousness, are a classically normative form of 'failure'.

Parents' self-esteem can be dependent upon the full reintegration of their child in a restorative forum. Restoration of the youth, forgiveness from the victim, acknowledgements of the youth's honesty or sincerity – all these things can be very important for the parent to feel vindication. I have described numerous parental behaviours – some positive and some negative – that suggest that parents sometimes feel intimately connected to the actions of their child and in the outcomes of the restorative forum. For instance, parents apologise to victims and other participants. They occasionally offer to personally contribute to the victim's reparation in very generous ways. On other occasions parents seem to want to distance themselves from their child's actions. I do not believe that I have uncovered anything new, just something that needs to be considered in the restorative literature. I think that the symbiotic relationship between the standing or honour of parents and their children has been recognized for centuries. Some quotes from Shakespeare demonstrate this. For instance, in one play the Duchess of York, devastated by the unconscionable conduct of her son, tries to distance herself from her son's immorality.

He is my son, yea, and therein my shame. Yet from dugs [breasts] he drew not this deceit. (*Richard III*, Act 2, Scene 2)

This character's metaphorical reference to *biological* traits reflects my previous comment that children can represent for parents the product of their *genes*, parenting skills, lifestyle and values. In a different play, the Duke of York expresses his dismay at the fact that fathers' honour and standing can be so easily ruined by the actions of their sons.

So shall my virtue be his vice's bawd;
And he shall spend mine honour with his shame,
As thriftless sons their scraping fathers' gold.
Mine honour lives when his dishonour dies,
Or my shamed life in his dishonour lies. (*Richard II*, Act 5, Scene 3)

This statement highlights that the honour of the father and son are tied. But most notably, the restoration of the son's standing and honour *will also result* in the restoration of the father's standing and honour.

The importance of these observations for criminologists in general is that the stigmatization of parents appears to be correlated with recidivism of children (Maxwell & Morris, 1999). I have suggested that this might be partly explained by the fact that low parental self-efficacy is itself correlated with negative parenting techniques (Bugental, 1991). If restorative forums (or courts for that matter) damage parental self-efficacy, they may negatively affect parenting techniques. This in turn may aggravate some of the factors in the offender's home environment that contribute to the juvenile's criminal behaviour.

Future research could expand these thoughts in numerous directions. One whole issue concerns young people. If it is true that parents' self-perception and children's self-perception are intertwined in some type of symbiotic relationship, what effect do the crimes of *parents* have upon their children? Whitbeck (1987) found that the self-efficacy (self-esteem) of boys was correlated to *their perception of* the self-efficacy of their fathers. Perhaps research in this direction can unravel some of the dynamics of criminogenic families, with a view to breaking generational cycles. On the topic of criminogenic families, it should not be assumed that the offence committed by a juvenile would be viewed as a 'failure' by the parents – it might even be viewed as a 'success'. Another issue is the experience of other cultures and races. The parent-child dynamics discussed in this thesis may well be culturally specific. In some cultures, members of a wider family might experience the 'contributor-victim paradox' in the same way as parents.

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APPENDIX 6.1

DERIVATION OF THE QUESTIONNAIRES

The research methods and questionnaires used in the present study were largely based upon those of the South Australian Juvenile Justice Project (SAJJ) (Daly, et al., 1998).¹⁰⁸ Amongst other things, SAJJ involved (a) a pre-conference questionnaire and a post-conference questionnaire for facilitators, (b) a post-conference questionnaire for the police officers who attended the conferences, (c) a post-conference questionnaire for the observers/researchers, and (d) specific post-conference interview questions for victims and young offenders. Numerous changes were made to the questionnaires because of two main factors. First, limited resources precluded personal interviews with victims and offenders. Second, the SAJJ project was designed to research some aspects of restorative justice that did not interest the Tasmanian research, such as the dynamics of power relations between conference participants (Daly, et al., 1998).

Two questionnaires were adapted from instruments developed by Daly et al. (1998) for SAJJ. The questionnaires were entitled the Researcher Observation Schedule and the Facilitator Survey. The Researcher Observation Schedule was the most heavily modified of Daly et al.'s (1998) instruments, with over 20 questions deleted (see appendix 6.2).¹⁰⁹ Four original questions were inserted (4, 10, 12, and 71).

Questions 10 and 12 concern the type of victims present at the conference. Three categories of victim were used, victims of personal sexual or physical abuse, victims of personal property crime, and victims of business property crime. The categories were adapted from Trimboli (2000). Question 71 asks whether the youth made any allegations against the police. Nine questions were adapted from questionnaires developed by Strang et al. (2000) for the Reintegrative Shaming Experiment (RISE). The items introduced from RISE were included to provide detailed quantitative measures of (a) the type of supporters present for young offenders, (b) the undertakings agreed upon, (c) the

¹⁰⁸ See <www.aic.gov.au/rjustice/sajj/>.

¹⁰⁹ Daly et al. (1998) originally referred to this questionnaire as the 'Briefing Observation Protocol'.

principles guiding the agreement of the undertakings, and (d) social problems facing the youth (see appendix 6.2, questions 98-106).

The Facilitator Survey excluded 13 of the original SAJJ items (see appendix 6.3).

Thirteen new questions were added (i-vii and 44-49). Perhaps the most important of these asked the facilitator how many conferences they had conducted previously, how many hours the facilitator had spent preparing the conference, and what level of detail they believed they had uncovered about the young offender's background. Also, the facilitator was asked whether after the conference was organised the youth had committed any further offences that were not dealt with by the conference.

APPENDIX 6.2

RESEARCHER OBSERVATION SCHEDULE

Research on Conferencing
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Project Directors
Law School, University of Tasmania
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Researcher Observation Schedule

community conference police conference (circle)

Note: If attending a police conference, disregard questions about police officers.

Date of conference
Region

Young person

- 1. How many young people were at the conference?
- 2. age
- 3. gender
- 4. ASOC ratings for the crime(s)
- 5. offence date
- 6. originating body: police court (circle)

9. How many **young person supporters** of each type were present at the conference? [RISE B 2]

NUMBER

- 1 Youth's mother.....
- 2 Youth's father.....
- 3 Youth's stepmother/defacto mother.....
- 4 Youth's stepfather/defacto father.....
- 7 Youth's other relative.....
- 8 Youth's friend.....
- 10 Youth's social worker.....

Total Present.....

Victim(s)

10. Were there any victims of this crime? yes no [original]

12. How many victims or victim representatives of each type were present at the conference? [original]

NUMBER

- 1 Victim of violence / sexual abuse.....
- 2 Victim of property crime.....
- 3 Business victim.....

13. How many victim supporters of each type were present at the conference? [RISE B 5 minus questions for adults]

NUMBER

Total
Present.....

Conference Phase I introduction and opening

Time the conference began (when facilitator opened)
Time conference ended (after the agreement is explained and signed)

Note: Sometimes a conference does not proceed past Phase I. Record all the things that did happen and then why the conference ended.

Legal advice/rights
(Imagine you are attending a conference for the first time.)

23. Overall, to what extent did the facilitator give a clear explanation of the legal context of the conference and the legal options of the young person?

- | | | | |
|------------|----------|--------|-------|
| not at all | somewhat | mostly | fully |
| 1 | 2 | 3 | 4 |

24. Overall, to what extent did the **young person** appear to understand their legal position and options?

- | | | | |
|------------|----------|--------|-------|
| not at all | somewhat | mostly | fully |
| 1 | 2 | 3 | 4 |

25. Overall, to what degree were you were satisfied with the way in which the facilitator introduced people and explained the conference process?

- | | | | |
|------------|----------|--------|-------|
| not at all | somewhat | mostly | fully |
| 1 | 2 | 3 | 4 |

Conference Phase II: offence and its impact

Q's 13-17 are relevant to conference Phase II, whereas shifts in young person -victim relations can occur in Phases II and III. All ask for your *overall judgment and impressions* of what happened. Use the right-hand side to comment further.

28. To what extent did the young person accept responsibility for the offence?

- | | | | |
|------------|----------|--------|-------|
| not at all | somewhat | mostly | fully |
| 1 | 2 | 3 | 4 |

30. To what extent was the young person defiant (ie., cocky, bold, brashly confident)?

- | | | | |
|------------|----------|--------|-------|
| not at all | somewhat | mostly | fully |
| 1 | 2 | 3 | 4 |

35. To what extent was the young person actively involved in the conference (includes non-verbal behaviour such as active listening or other indicators of attentiveness)?

- | | | | |
|------------|----------|--------|-------|
| not at all | somewhat | mostly | fully |
| 1 | 2 | 3 | 4 |

36. To what extent did the young person apologise spontaneously to the victim?
(Or, if the victim was not present, offer spontaneously to make an apology?)

- | | | | |
|----------------------------|------------------------|--------|-------|
| not at all
(no apology) | had to be
drawn out | mostly | fully |
| 1 | 2 | 3 | 4 |

B. Victim- young person relations

Note: Your judgment of the character and quality of victim- young person relations should reflect *what occurred for the entire conference, not just during Phase II*. If the victim is not present at the conference, use "no victim or rep present." But if the young person speaks as if the victim is there, note that on the line by the item.

37. To what degree did you empathise with the young person?

- | | | | |
|------------|----------|--------------|--------------|
| not at all | a little | considerably | a great deal |
| 1 | 2 | 3 | 4 |

37. To what degree did you empathise with the victim?

- | | | | |
|------------|----------|--------------|--------------|
| not at all | a little | considerably | a great deal |
| 1 | 2 | 3 | 4 |

Note: For Qs 38-44, "the victim" includes the victim or the victim's representative.

38. How effective was/were the victim(s) in describing the offence and its impact?

- | | | | | |
|------------|----------|--------|--------|-----------------------------|
| not at all | somewhat | mostly | highly | no victim or
rep present |
| 1 | 2 | 3 | 4 | 8 |

40. Why was/were the victim(s) effective or not effective?

.....

.....

.....

42. To what extent did the young person understand the impact of their crime on the victim (saying, for example, "I can see why you are angry" or in other ways, demonstrating concern or empathy for the victim)?

- | | | | | |
|------------|----------|--------|-------|-----------------------------|
| not at all | somewhat | mostly | fully | no victim or
rep present |
| 1 | 2 | 3 | 4 | 8 |

43. To what extent did the victim understand the young person's situation (saying, for example, "I know where you're coming from" or "When I was your age, I did something similar" or in other ways, demonstrating concern or empathy for the young person)?

not at all	somewhat	mostly	fully	no victim or rep present
1	2	3	4	8

47. To what extent was there positive movement (or mutual understanding) between the young person's supporters and the victim (or the victim's supporters), *which was expressed in words?*

not at all	somewhat	mostly	fully	no victim or rep present
1	2	3	4	8

Characterise the nature of the connection, eg., "mother-to-mother" or "father-to-father" or "parent-to-parent" (mixed M/F)?

.....

49. To what extent did the young person's supporters offer a balanced view of the young person as an individual?

unbalanced too harsh on the young person	too excusing of the young person	balanced	not unbalanced or balanced: showed no interest in the young person
1	2	3	4

50. Overall, what were your impressions of the young person during Phases I and II?

.....
.....
.....

Conference Phase III: outcome discussion

56. What was the outcome for this young person? (More than one may apply). [RISE A 54]

-Community Service Order	yes	no
- How many hours?		
-Rehabilitative/Counselling program ordered	yes	no
-Monetary compensation/reparation to victim	yes	no
amount		
-Formal apology	yes	no
-Other (specify)		

.....
.....
.....
.....
.....
.....

57. In deciding upon the outcome how much did the conference take into account the principles of: **[RISE A 55]**

Punishment (a penalty imposed upon the young person to punish)

not at all	to some	to a fair	to a high
1	degree	degree	degree
	2	3	4

Repaying the community

not at all	to some	to a fair	to a high
1	degree	degree	degree
	2	3	4

Repaying the victim

not at all	to some	to a fair	to a high
1	degree	degree	degree
	2	3	4

Preventing future offences (to help avoid re-offend)

not at all	to some	to a fair	to a high
1	degree	degree	degree
	2	3	4

Restoration (a penalty – but to restore the young person’s honour/esteem)

not at all	to some	to a fair	to a high
1	degree	degree	degree
	2	3	4

58. Were other problems confronting the young person raised at the conference? **[RISE A 62]**

- yes / no
- Financial.....1
- Educational.....2
- Employment.....3
- Health.....4
- Relationship..... 6

59. If yes, how well were these problems addressed at the conference? **[RISE A 63]**

not at all	to some	to a fair	to a high
1	degree	degree	degree
	2	3	4

60. How would you characterise the outcome decision (tick one)? (Focus on the young person and police officer relationship.)

- genuine consensus (general enthusiasm by all participants toward the outcome, which the police officer ratified)
-young person acceptance and agreement (young person agreed to the outcome, as modified by the police officer, saying "I don't have a problem with it" or "that's OK")
- young person acceptance with reluctance (young person agreed to the outcome, as modified by the police officer, but there may have been some pressure to accept it)

63. To what degree did the police officer work cooperatively with other conference participants in the outcome discussion?

antagonistic to a high degree	antagonistic to some degree	cooperative to some degree	cooperative to a high degree
1	2	3	4

64. To what degree did the young person's parents/guardian(s) press their position for the outcome?

not at all	to some degree	to a fair degree	to a high degree
1	2	3	4

67. In your view, was the outcome too lenient, too harsh, or about right?

too lenient		about right		too harsh
1	2	3	4	5

Why do you think so?

.....

.....

.....

68. How clearly were the possible consequences of future offences communicated to the young person? [RISE 46]

not at all	to some degree	to a fair degree	to a high degree
1	2	3	4

69. If the possible consequences of future offences were communicated to the young person, to what extent was this done in a non-threatening or matter-of-fact way? [RISE 47]

not at all	to some degree	to a fair degree	to a high degree
1	2	3	4

71. Did the young person's comment suggest any inappropriate activity by the police? [original]

not at all	minor incident	significant incident	serious allegation
1	2	3	4

Your opinions, impressions, and reflections

Here are some statements about conference processes and participants. Show your opinions or impressions *for this conference*. Put N/A if some questions are not applicable (eg. there was no victim present). Comment on the right-hand side of the page if you want to say more about an item.

	strongly agree	agree	unsure	disagree	strongly disagree
75. The police officer appeared to be prepared for the conference (ie., knew the offence details)	1	2	3	4	5
82. The facilitator appeared to be prepared for the conference.	1	2	3	4	5
83. The facilitator managed the movement through the conference stages well.	1	2	3	4	5
84. The facilitator permitted all the key conference participants, including the police officer to have their say in the conference.	1	2	3	4	5
85. The facilitator seemed to be "impartial," that is, not aligned with the YP, police officer, the parent(s), or the victim.	1	2	3	4	5
86. The YP's parent(s), who were present at the conference, seemed to have the YP's best interests at heart.	1	2	3	4	5
87. The YP's parent(s), who were present at the conference, seemed unable to control the YP.	1	2	3	4	5
88. The victim(s) was distraught or upset by what the YP or their supporters said to them, even by the end of the conference.	1	2	3	4	5
Comment further on the nature of what might be termed the "revictimisation" of the victim					
.....					
.....					
.....					

89. The YP understood the relationship between their offence and the outcome.	1	2	3	4	5
91. The police officer tried to take over the facilitator's role as conference chair.	1	2	3	4	5
92. The process of deciding the outcome was fair.	1	2	3	4	5
93. The conference was largely a waste of time.	1	2	3	4	5
94. The police officer had a set opinion for the outcome.	1	2	3	4	5
95. The facilitator negotiated the outcome well.	1	2	3	4	5

96. Do you think it likely or unlikely that the young person will be involved in a serious offence in the future, one that comes to the attention of the police?

very likely	likely	unsure	unlikely	very unlikely
1	2	3	4	5

Why do you think so?

.....

.....

.....

.....

97. Reflecting on the conferences you have observed, how would you rate this conference overall?

poor	fair	good	excellent	truly exceptional
1	2	3	4	5

RISE

98. How much support was the young person given during the conference?

1 (none)	2	3	4	5	6	7	8 (very much)
----------	---	---	---	---	---	---	---------------

99. How much reintegrative shaming was expressed?

1 (none)	2	3	4	5	6	7	8 (very much)
----------	---	---	---	---	---	---	---------------

100. How reintegrative was the conference for this young person?

1 (none)	2	3	4	5	6	7	8 (very much)
----------	---	---	---	---	---	---	---------------

101. How much approval of the youth as a person was expressed?

1 (none)	2	3	4	5	6	7	8 (very much)
----------	---	---	---	---	---	---	---------------

102. How much was the young person treated by their supporters as someone they love?

1 (none)	2	3	4	5	6	7	8 (very much)
----------	---	---	---	---	---	---	---------------

103. How much respect for the young person was expressed?

1 (none)	2	3	4	5	6	7	8 (very much)
----------	---	---	---	---	---	---	---------------

104. How much disapproval of the young person' act was expressed?

1 (none)	2	3	4	5	6	7	8 (very much)
----------	---	---	---	---	---	---	---------------

105. How much stigmatising shame was expressed?

1 (none)	2	3	4	5	6	7	8 (very much)
----------	---	---	---	---	---	---	---------------

106. How much disappointment in the young person was expressed?

1 (none)	2	3	4	5	6	7	8 (very much)
----------	---	---	---	---	---	---	---------------

111. To what degree did the conference have the appearance of a "powerless youth in a roomful of adults"?

to some to a fair not at all	degree	degree	to a high degree
1	2	3	4

120. Any other comments about this conference? Note here what struck you as significant, important, unusual, surprising, or otherwise not captured in the previous questions, but which should be noted about this conference.

.....

.....

.....

.....

.....

.....

.....

.....

.....

Date survey completed Please go over the protocol to make sure that all the questions are answered and are legible.

Diagram of conference participants (show where you were sitting as observer).

APPENDIX 6.3

FACILITATOR SURVEY: PART A

Research on Conferencing

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Facilitator Survey
Part A: Pre-Conference

This survey is for both DHHS facilitators and police facilitators. As you know, conferences conducted by the DHHS are attended by a police officer and some questions in this survey are about those police officers. If you are a police facilitator please disregard all the questions about police officers (PO).

This survey seeks your judgments and reflections on a conference to be attended by Jeremy Prichard. Part A asks about your *pre-conference* preparation and impressions. It should be completed when all your preparation for the conference has finished and before the conference begins. Please give *Part A to Jeremy after the conference*.

We recognise that conferences are complex events, but it is possible to come away from one with an idea of how it went. Conference participants - the facilitator, the police officer, the young person, the victim, their supporters, and others - may have different views on the matter. The more reflective and thoughtful your responses are to the survey, the more balanced and complete picture of youth justice conferences we will have.

Many survey items ask for your judgments about conference participants, dynamics, and outcomes, using a numerical (Likert) scale. Please circle only one response. We recognise that it can be difficult to give one answer - for example, "agree" or "disagree" - to complex and changing developments in a conference. Answer the Likert scale questions with your overall impression or judgment. If you want to say more about any item, write your comments to the right side of the question.

There are other survey items that ask for your opinions and explanations in your own words ("open-ended questions"). Feel free to write as much as you wish in replying to these items, continuing to additional pages, if necessary. Remember that your responses are confidential. All data will be gathered, stored, and analysed using generated id numbers, not names of respondents.

These abbreviations are used throughout the survey:
YP = Young Person (or offender)
FC = Facilitator (yourself)

PO = Police Officer (for DHHS conferences only)

*Please return your completed survey in the stamped, self addressed envelope.
If you have any questions about the survey or the project, call Jeremy
Prichard on 6226 2740.*

Concerns or complaints

*If you have any concerns of an ethical nature or complaints about the manner
in which the project is conducted, please contact the University Human
Research Ethics Committee:
(Chair) Dr Margaret Otlowski: tel 62 267569
(Executive Officer) Ms Chris Hooper: tel 62 262763.*

Facilitator Survey
Part A: Pre-Conference

If the conference has more than one young person *please answer all
relevant questions with the same young person in mind.*

Preliminary questions

i. Please circle which type of facilitator you are:

DHHS facilitator

Police Facilitator

ii. How many conferences have you conducted before this one?

iii. On what date were you notified about this conference?

v. How many hours do you estimate you have spent preparing for this
conference?

vi. How much detail have you been able to uncover about the YP in this
conference (e.g the YP prior criminal record, educational history, family
background, drug/alcohol problems)?

basic coverage facts of case YP		adequate knowledge of YP's situation			comprehensive of problems facing	
1	2	3	4	5	6	7

vi. Did you have any problems with any government departments in preparing
for this case?

yes

no

If yes, please specify what the problems were and with which department.

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vii. What were the offence(s) committed by the YP and on what date(s) did they occur?

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Pre-conference indicators and facilitator preparation

When you are setting up the conference, there can be indicators of how it may go. For example, some participants may give greater priority to attending the conference than others. Also during this time, you become aware of participants' emotions and their orientations to the case. Part A taps these pre-conference elements and how they may affect your preparation of the conference.

1. To what extent did the victim(s) give priority to this case (that is, 'too busy', or, willing to attend any time)?

no show	little or none	some	good to high	very high
0	1	2	3	4

2s1 Did you have contact with the YP?
yes no

2s2. To what extent did the YP give priority to this case (that is, "too busy", or, willing to attend any time)?

little or none	some	good to high	very high
1	2	3	4

3s1. Did you have contact with the parents or guardians?
yes no

3s2. To what extent did the YP's parents or guardians give priority to this case (that is, "too busy" or willing to attend any time)?

little or none	some	good to high	very high
1	2	3	4

4. To what extent was the PO cooperative with you in the scheduling of the conference (that is, their degree of flexibility in attending the conference around a time you were planning)?

highly inflexible	somewhat inflexible	flexible	highly flexible
1	2	3	4

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7. What degree of anger did the victim(s) express toward the YP in your pre-conference conversations?

little or no anger	some anger	good deal of anger	very intense anger
1	2	3	4

8. What degree of fear did the victim(s) express toward the YP in your pre-conference conversations?

little or no fear	some fear	good deal of fear	very intense fear
1	2	3	4

10. How would you characterise the YP's orientation to the conference in the pre-conference period? (tick one)

- sees him/herself to be more of a victim than an offender (negative or somewhat negative orientation)
- is neutral toward the idea of a conference
- sees the conference as an opportunity to resolve the conflict (positive orientation)
- had no contact with the YP and thus cannot make a determination

Comments for question 10?

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13. What special measures, if any, did you take in preparing for this conference (eg., venue, security, time spent in persuading some participants to attend)?

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Research on Conferencing

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Facilitator Survey
Part B: Conference

Part B asks about your *conference* impressions and experiences. Please complete Part B within two days after the conference has ended, when your memories are fresh. Remember that your responses are confidential. All data will be gathered, stored, and analysed using generated id numbers, not names of respondents.

These abbreviations are used throughout the survey:
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PO = Police Officer (DHHS conference only)

Please return your completed survey in the stamped, self addressed envelope. If you have any questions about the survey or the project, call Jeremy Prichard on 6226 2740.

Concerns or complaints
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If the conference has more than one young person *please answer all relevant questions with the same young person in mind.*

Were there any last minute developments or problems you faced on the day of or just before the conference began?

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Conference Phase L Introduction and opening

2. To what extent were you satisfied with the way you introduced people and explained the conference process?

not at all	somewhat	mostly	fully
1	2	3	4

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Conference Phase II: offence and its impact

Note: Remember that we are interested in *your overall judgment and impressions* of what happened during this phase of the conference. Use the right-hand side to comment further.

4. To what extent did the YP accept responsibility for the offence?

not at all	somewhat	mostly	fully
1	2	3	
4.....			

6. To what extent was the young person defiant (ie., cocky, bold, brashly confident)?

not at all	somewhat	mostly	fully
1	2	3	
4.....			

9s1. To what degree did you empathise with the young person?

not at all	a little	considerably	a great deal
1	2	3	4

9s2. To what degree did you empathise with the victim?

not at all	a little	considerably	a great deal
1	2	3	4

13. To what extent did the YP understand the impact of their crime on the victim(s) (saying, for example, "I can see why you are angry" or in other ways, demonstrating concern or empathy for the victim(s))?

not at all	somewhat	mostly	fully	no victim or rep present
1	2	3	4	8

18. To what extent did the YP's supporters offer a balanced view of the YP as an individual?

<u>unbalanced</u> too harsh on the YP <u>YP</u>	too excusing of the YP	<u>balanced</u>	not unbalanced or balanced: showed <u>no interest in the</u>
1	2	3	4

19. Overall, what were your impressions of the YP during Conference Phases I and II?

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Conference Phase III: outcome discussion

22. How would you characterise the outcome decision? (*Focus on the YP and PO relationship.*)

-genuine consensus (general enthusiasm by all participants toward the outcome, which the PO ratified)
- YP acceptance and agreement (YP agreed to the outcome, as modified by the PO, saying "I don't have a problem with it" or "that's OK")
- YP acceptance with reluctance (YP agreed to the outcome, as modified by the PO, but accepts it with reluctance)

If you wish, please clarify or explain what happened.

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24. To what degree were you able to step back and let the conference participants, *other than the PO*, arrive at the conference outcome?

not at all	to some degree	to a fair degree	to a high degree
1	2	3	4

25. In your view, was the outcome too lenient, too harsh, or about right?

too lenient		about right		too harsh
1	2	3	4	5

Your opinions, impressions, and reflections

Here are some statements about conference processes and participants. Show your opinions or impressions *for this conference*. Put N/A if some questions are not applicable (eg., there was no victim(s) present). Comment on additional pages if there is any item you want to say more.

	strongly agree	agree	unsure	disagree	strongly disagree
26. The PO lectured the YP inappropriately.	1	2	3	4	5
28. By your actions and words, you tried to convey to the YP that they needed to change their attitude (not just toward the offence but in general).	1	2	3	4	5
29. The YP's parent(s), who were present at the conference, seemed to have the YP's best interests at heart.	1	2	3	4	5
32. The victim(s) was distraught or upset by what the YP or their supporters said to them, even by the end of the conference.	1	2	3	4	5
33. The YP understood the relationship between their offence and the outcome.	1	2	3	4	5
35. The PO tried to takeover your role as conference chair.	1	2	3	4	5
36. The process of deciding the outcome was fair.	1	2	3	4	5
37. The conference was largely a waste of time.	1	2	3	4	5
38. The PO had a set opinion for the outcome.	1	2	3	4	5
39. Do you think it likely or unlikely that the YP will be involved in a serious offence in the future, one that comes to the attention of the police?					
	very likely	likely	unsure	unlikely	very unlikely
	1	2	3	4	8

Why do you think so?
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40. From the following list, tick the three aims that were most important to you *for this conference*, in light of the circumstances *in this particular matter*. *Note: We know what the Act says, but we are interested to learn what aims were important to you in this conference. Please read the list of all the items before you tick the three that were most important to you. Do not tick more than three, but you can tick just one or two, if that is applicable.*

.....for the YP to be punished appropriately
.....for the YP to take full responsibility for their actions
.....for the victim to receive compensation or restitution
.....for the participants, not the professionals, to decide the outcome
.....for the YP to be "scared straight"
.....to repair the damage the offence has caused the participants

-for the victim to be reassured that the offence won't happen again
-for the outcome to deter the YP from future offending behaviour
- to use informal social controls (like family or community ties) rather than formal controls (like court) to keep the YP out of trouble.
- that the YP shows remorse (eg., offers an apology) and the victim extends forgiveness (eg., accepts apology)

If you wish, please clarify or explain why you chose the three items in Q 40.

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41. Reflecting on the conferences you have coordinated in the past, how would you rate this conference overall?

				truly
poor	fair	good	excellent	exceptional
1	2	3	4	5

43. Reflecting on special measures you took, if any, for this conference, did they turn out to have a bearing on its success?

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44. How many YP attended this conference?

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45. How old is the YP?

46. What is the suburb that the YP lives in?.....

47. After the conference was organised did the YP commit any other offences that were NOT dealt with in the conference ?

yes no

48. If 'yes', in your opinion did this effect the usefulness of the conference? Do you think all the offences should have been dealt with together, for instance? Would the other people at the conference behaved differently if they had known about the other offences? Please comment.

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49. Any other comments about this conference?

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Date survey completed

*Thanks! Please take several moments to go over the survey
to see that all the questions are answered and legible.
Please post the questionnaire to Jeremy.*

APPENDIX 6.4

FACILITATOR INFORMATION SHEET AND CONFERENCE PARTICIPANT CONSENT FORM

This study is being conducted by Professor Kate Warner, Associate Professor Rob White and Dr John Davidson with the help of the DHHS and the police to evaluate how well the new conferences are working over a 2 year period. To see how the conferences run in practice, over 80 conferences will be observed by Jeremy Prichard as a part of his PhD. This study has been approved by the University Human Research Ethics Committee.

The researcher would like to come to the conference you are facilitating soon, but *only if you think it is appropriate knowing all the circumstances of the case.*

At the conference you will not be evaluated as a professional. The way you choose to run the conference will be kept absolutely confidential, though the researcher may refer to examples from your conference in a general way.

As you can understand, it is also very important that the key people in your conference give their consent to the researcher being present at the conference. The most appropriate way is for you to ask for their consent when you are arranging the conference.

Please contact the young offender(s) and their guardian(s), and the victim(s) and their supporter(s) at least one week before the conference. Please tell them in your own words:

- **Conferences are new in Tasmania and some research is being done to see how well they work.**
- *A researcher from the university wants to come to your conference and his name is Jeremy Prichard.*
- *He is not allowed to come to the conference unless you and everyone else coming to the conference are comfortable for him to be there.*
- *He will not say anything at the conference.*
- *Jeremy knows that by law he must keep who is at the conference completely confidential. He will not write down your name or anything which could identify you. There is no chance that someone will find out about you being at the conference from Jeremy.*
- *If you would like to know anything else about the research you can contact Jeremy or you can ask him at the conference.*
- *Do you give your consent for Jeremy to come to the conference?*

If all the participants give their consent, please sign this sheet and return it to Jeremy.

signature:.....

date:.....

Thank you very much for your help.